Supporting people all the way

An overview of the Supporting People programme

Steve Griffiths

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1 Introduction

The overall aim of this review is to explore the relationship between three key areas of government reform which address the continuum of services and provision for people who need support to live independently, or need long-term care:

- the 'Supporting People' review of supported accommodation (DSS, 1998b) and its implementation through the 'Supporting People' programme
- the Royal Commission on Long Term Care for the Elderly (1999), and the Government's response to it (Department of Health, 2000a)
- *Modernising Social Services* (Department of Health, 1998) and the policy developments arising from it.

The review addresses underlying consistencies and contradictions between these related fields of policy as they develop, particularly the parts played by definitions of care, support and accommodation costs, and their strategic and practical implications, across government departments and between central and local government, providers and users. It also looks at the parts played by related issues such as disability benefits and charges for services.

It is driven particularly by a recognition of the need for coherence within each government initiative on supported housing, independent living and long-term care, and between them. The review develops analysis by Watson and Griffiths (1999) in their report, *Loose Change – the Impact of Funding Shifts on Tenants in Supported Housing*, for the Carr-Gomm Society, which was funded by the Housing Corporation as an Innovation and Good Practice project.

Clearly, we are dealing with a fast-moving series of developments. Some parts of the review brief have been examined and developed in some depth. In most, the agenda has shifted. In the case of the Government's plans for Housing Benefit reform, the prospect of early, large-scale reform has receded. The pace of development of the 'Supporting People' programme is fast. The first two Department of the Environment, Transport and the Regions (DETR) consultation documents (DETR, 2000a, 2000b) have been examined; but this study is primarily concerned with the scope of the programme and its relationship with other channels of provision, and we have resisted getting too much into the mechanics of implementation, such as phasing.

The first task of the review has been to map the policy strands and their relationship as far as possible. Considerable support in this process has been provided by civil servants from the three main departments concerned, the DETR, Department of Social Security (DSS) and Department of Health. It is encouraging that they have viewed this exercise as helpful to them, and indeed a number of previously unseen policy connections have already been made within Government as a result of the review's activities.

The second task has been to make some sense of the map, and to point some ways forward, on individual fronts, but always taking account of the whole. Indeed, with some encouragement from colleagues, the report ventures to test out a comprehensive solution to some of the difficulties identified. In doing so, the approach has had to be a little circumspect. Some issues are on the way to resolution, and

this means that the balance of the agenda is shifting. An outcome of the review will therefore be to assess these continuing shifts and try to identify some new and emerging priorities in a changing landscape.

Feeding off the detail of this process, there is some attempt to identify specific issues that need further investigation, hopefully to inform the Joseph Rowntree Foundation's thinking about its future priorities in this field.

2 Policy aspirations and criteria for success

This chapter sets out some of the policy aspirations and criteria for success of the key government initiatives we are concerned with. It presents these with minimal discussion at this point. It ends with a set of performance criteria suggested by Watson and Griffiths (1999) in their study. There is little one can argue with in the aspirations expressed by these statements of government policy, but they vary in their completeness. Still the most comprehensive statement is the revised set of objectives of the Inter-departmental Review of long-term funding arrangements for support services from November 1997 (Box 1).

Box 1 Objectives of the Inter departmental Review of long-term funding arrangements for support services, DSS, November 1997

- Developing a government-wide approach to a sustainable long-term funding mechanism for support services.
- Clarifying responsibilities for controlling, targeting and prioritising public expenditure on services supporting people in their homes.
- Ensuring the funding system can respond to individuals' needs and enable support to be provided in different types of accommodation and tenure.
- Avoiding the possibility that accommodation choices may be distorted by the availability and interaction of different funding.
- Encouraging coherent and transparent planning, funding and accountability arrangements for support services in the context of wider community care and related programmes.
- Compatibility with the Government's wider social policy objectives and enhancing local authorities' community leadership role.
- Encouraging the most cost-effective approach across all sectors which takes account of all public expenditure costs, wider funding responsibilities and links with other changes that local authorities face.
- Giving landlords confidence to make accommodation available to vulnerable people and to develop new provision.
- Identifying solutions that are workable at central and local levels.

'Supporting People' sets out some 'key objectives for central government and local authorities and probation services in supporting vulnerable people' (DSS, 1998b) (Box 2).

'Supporting People' also offers a slightly more organisational focus (Box 3).

It may be noted that there is already a tension to be resolved in these objectives. It is between the notion of greater *flexibility* for housing, health and social services to decide how the new single budget should be used

Box 2 'Supporting People': key objectives for central government and local authorities and probation services in supporting vulnerable people (DSS, 1998b)

- Prevention: helping to sustain people in the community and pick up problems before they become a crisis.
- Promoting independence: support to enable people to take their own decisions and live their own lives.
- Alleviating crisis: support to help people through crisis in their lives.
- Resettlement: support to help people establish themselves in a new home and community.
- Inclusion: supporting people who may not be seeking support, who have difficult behaviour or unconventional lifestyles, or who have multiple needs or fall outside traditional 'client groups'.
- A focus on people: these objectives can only be met through a variety of flexible services moulded around people and the way they choose to live their lives.

alongside their existing responsibilities; and the aim to achieve overall value for money, minimise bureaucracy and administration, and address potential gaps and overlaps. If this is to be achieved as well as greater flexibility, a firm definitional and organisational framework is required.

Box 3 'Supporting People': aspirations, DETR, December 1998

The Government's proposals should give local housing, health, social services and probation services greater flexibility to decide how the new single budget should be used alongside their existing responsibilities to bring new approaches to commissioning and funding the full range of care, support and other services that vulnerable people may require to live in the community, in order to:

- better meet individuals' needs and preferences to maintain their independence
- minimise bureaucracy and administration
- enable joint decision-making to address potential gaps and overlaps
- achieve overall value for money.

Watson and Griffiths took account of this tension, demonstrated by examining the experience of both users and providers in their research, to suggest a simpler but perhaps more focused set of criteria:

> *… for an effective funding system for supported housing which should achieve improvements in the following:*
>
> - *stability of services*
> - *adequacy of services*
> - *responsiveness to individual needs and preferences*

- *streamlining, clarity and transparency of funding vehicle*
- *the mechanism for equity of distribution*
- *consistency*
- *empowerment of the user*
- *accountability of the provider to the purchaser*
- *removal of contradictions with parallel vehicles of provision.*

Watson and Griffiths argue that the 'Supporting People' objectives cannot be achieved at the expense of any one of these criteria. They need to be achieved across the full range of needs and services, from bricks and mortar through support services to personal care – and one should add, from the findings of the present review, nursing care. One weak link undermines the rest. Along with the more comprehensive objectives of the Inter-departmental Review, these criteria provide a means to assess whether the present series of government initiatives really does resolve 'the present complicated tangle of other funding streams, and overlapping management structures' (DSS, 1998b).

The Report of the Royal Commission on Long Term Care for the Elderly (1999) had a remit which overlapped with the concerns addressed here, though the Commission's overall objectives are not focused in a way to be of immediate use to this exercise. However, many strands of the Commission's approach are very pertinent, and will be examined in this report.

Just as relevant to the full range of needs and services we consider here is the Government's response to the Royal Commission's report, which fell outside the timescale of this project (Department of Health, 2000a). Therefore, the statement of the Secretary of State for Health in the debate on the report on 2 December 1999 was used as a starting point for a number of strands in this review, as it brought together much current thinking on the Department of Health 'wing' of the Government's concern with provision for support and care. The following is significant for what it does and what it does not mean:

> *… early in the new year, we shall consult on new guidance to give everyone fairer access to social services. We want to iron out unacceptable variations that exist at present and to create a fair set of rules and procedures that everyone can follow and understand. The aim will be to achieve greater consistency between local authorities in the way that they apply eligibility criteria for accessing all adult social services, including long-term residential care. Importantly, the guidance will stress the need to align social services criteria with NHS continuing health care criteria. It will also stress the need to agree eligibility criteria with housing agencies to ensure a properly co-ordinated response to people's needs.* (Hansard, 1999a)

At first sight, this suggests an intention to bring together the initiatives from the relevant government departments and attempt to instil consistency. However, consultation with the Department of Health reveals that it does not mean this. It means a clearer framework of eligibility criteria for social services which allows for greater clarity, and consistency to some extent, though the issue of equity of provision between local authorities will not be addressed. It means an attempt to resolve the tensions between the provision of personal care

and nursing care which are examined in this report. It means *local* agreements on eligibility criteria between housing agencies, health authorities and other relevant bodies; it does not mean that any definitional or organisational tensions between government departments or related government initiatives are recognised in this part of the statement. This, however, is a continuing debate within Government. It appears increasingly likely that the development of policies to implement 'Supporting People' is obliging government departments to take a more co-ordinated approach to policies on support and care – particularly between the Department of Health and the DETR.

The values expressed in Section 31 of the Health Act 1999 are consistent with those expressed in 'Supporting People'. This gives the Secretary of State for Health power to make regulations for partnership between NHS bodies and health-related functions of local authorities. In particular, it makes provision for funding to be transferred between the two, or for separate funds to be set up, for health-related purposes. This is discussed in Chapter 8.

This overlapping jigsaw of aims provides a starting point for the process of review.

3 A daunting tangle to describe: supported housing, long-term care and independent living

Only to map the policy labyrinth which extends between the DETR, DSS and Department of Health, with its teeming detail and often undiscovered connections, and then the tangle of funding streams experienced by providers, local and health authorities, and users, is to go some way towards solving the problem. None of the reviews of supported housing or residential care in the last three years has done this adequately. Watson and Griffiths' *Loose Change* (1999) has described the incompleteness of the scope of 'Supporting People' as proposed at the end of 1998. In Table 1, we reproduce the chart from their report which shows the functions and funding streams included in the 'Supporting People' programme, and those which are not. There are some minor adjustments as a result of new information.

Since there are very many people who need services in several or all of the categories in Table 1, this report will refer continually to the full continuum of services shown in the left hand column.

It should be pointed out that 'Rent/housing charges' under 'DSS Housing Benefit' is in bold not because Housing Benefit covering rent is intended to move over to the 'Supporting People' programme, which it is not, but because, as we shall see, many providers have in recent years shifted the cost of support charges into mainstream rent in order to protect them from cutbacks in Housing Benefit provision for support.

The intention of Table 1 is only to map funding streams. It should not be taken as a schematic description of a process. The point is

Table 1 Scope of 'Supporting People'

Funding element	Housing Corp. SHG/SHMG	DSS Housing Benefit	DSS resid. care	DSS disability benefits	LA social services	LA housing	Health authority	Probation
Capital – building/ adaptations	Yes				Yes	Yes	Yes	
Rent/housing charges		**Yes**	Yes		Yes		Yes	
Intensive housing management	**Yes**	**Yes**	Yes		Yes	**Yes**	Yes	
Accommodation-related support	**Yes**	**Yes**	Yes		Yes	**Yes**	Yes	**Yes**
Other support	**Yes**	**Yes**	Yes	Yes	Yes		Yes	**Yes**
Personal care			Yes	Yes	Yes		Yes	
Domiciliary care				Yes	Yes			
Nursing care					Yes		Yes	

Note: Areas in bold show elements covered by the 'Supporting People' grant.

Source: Watson and Griffiths (1999).

made later that there can be too much compartmentalisation of functions, in a way that does not reflect the flexible realities of providing a service.

Clearly, 'Supporting People' addresses only a part of the continuum, excluding as it does personal and nursing care. Personal care is used as a 'boundary term' to define the scope of the 'Supporting People' programme and other areas of provision. For this reason, the consistency of its use will be examined closely in Chapter 4.

However, when added together, the range of different initiatives driven by the Government does cover the entire continuum. This report will identify them and examine what they leave out, where they overlap, connections that fail to be made and what the consequences may be. It will examine how legislation, guidance and policy statements cohere, and the implications of how things stand at present for the achievement of the aspirations set out in the previous chapter.

What drives the analysis is the view that the overall strategy of the Government towards encouraging independent living demands a comprehensive overview as a starting point – one that matches the breadth of aspiration of the terms of reference of the Inter-departmental Review in 1997, which appear in subsequent years to have been lost sight of. This report describes considerable strains at many points in the interconnected structure of housing, support and long-term care. It will conclude that those strains are so great that it makes sense to stand back and regain that overview. There are clusters of very positive development both in current central reviews and in practice on the ground, which is often creative in challenging circumstances largely created by earlier governments. But, if some gaps in coherence and recognition of consequences across the three major government departments are not tackled, the consequences of 'Supporting People' will not be a great advance on its original description of the situation:

> *… complicated tangle of … funding streams, and overlapping management structures.* (DSS, 1998b)

Now, however, the Government has an opportunity to get the aspirations of the Inter-departmental Review more firmly in its sights again. Three major development processes need to be brought together:

- the Secretary of State for Health's response to the Royal Commission recommendations
- led by the DETR, the planning for implementation of 'Supporting People', which by taking a pragmatic and inclusive approach may present opportunities to repair some of the fragmented thinking of the past
- the Government's response to the Audit Commission's report *Charging with Care* (Audit Commission, 2000), which, as well as offering an analysis of inconsistencies in charging for home care services, offers a broader framework for recasting the way Government deals with housing, support and care costs, which may offer real opportunities for the Department of Health to resolve the major historical anomalies described below, in a way that encompasses and harnesses the 'Supporting People' programme

development process. This framework is not unlike the approach advanced by Watson and Griffiths.

This opportunity is discussed in detail in Chapter 10.

Background: support charges and Housing Benefit – a brief history

This focuses on the circumstances that gave rise to 'Supporting People'. In doing so, it neglects the parallel histories of residential and nursing care, which are addressed later only in their present relationship to the 'Supporting People' debate.

The debate has its origins in controversy over the issue of the funding of support through Housing Benefit. This was not always a problem. *The Housing Benefit Guidance Manual 1982*, para. 4.15, stated:

> *Authorities are in particular expected to treat as eligible for help charges in respect of … for elderly and disabled claimants, charges for wardens and other services for their special needs.* (DSS, 1982, para. 4.15)

From 1985, payments for support were being made through Housing Benefit where the service was 'reasonably necessary for the proper enjoyment of that dwelling'. Following an amendment in 1988 concerning the eligibility of services provided by the landlord in person or someone employed by him, the Government in the early 1990s became seriously concerned about a perceived excessive generosity in the Housing Benefit provision for support and counselling. A Divisional Court decision confirming a liberal interpretation of this provision was effectively reversed by a series of new regulations which established a narrower interpretation. This culminated in the view maintained by the DSS from 1995 that services for 'general counselling or any other support services' were eligible only if they were 'concerned with the fabric of the dwelling'; and that, furthermore, this had always been the case.

During these years, many local authority benefit services cut back sharply on the expansion in provision through Housing Benefit which had begun with the advent of community care; but there was great inconsistency and some quiet resistance. Since there was no fallback provision to maintain payments for support services from any other source, there was anxiety about the future viability of much supported housing. Faced with a barrage of opposition to new amendment regulations which would have confirmed the 'fabric of the dwelling' interpretation, the then Secretary of State for Social Security, Peter Lilley, withdrew the draft regulations in July 1996 and announced an 'urgent inter-departmental review of the arrangements for funding supported accommodation'.

The Government's anxiety about cost was based on two factors. First, unlike much other provision in the sector, Housing Benefit payment for support was effectively open-ended: there was not a defined 'benefit rate' for support. Second, and this might have been foreseen, the hospital closure programme from the 1970s onward meant that more people who needed support were living in the community rather than in institutions. 'Care in the Community' accelerated this: an increase in numbers living in the community, requiring support and claiming Housing Benefit was a

consequence of government policy.

At the same time, however, it emerged that little was known about how much was being spent in this area, and whether it was increasing or decreasing. Research was commissioned to find out.

Before the Inter-departmental Review had reported, in 1997, a new Divisional Court hearing established the limitation of payments for support and counselling in relation to 'the provision of adequate accommodation' to support services 'such as may tend to preserve the condition of the accommodation's fabric as the landlord undertakes to provide it'. By this time, it was acknowledged that implementation of this interpretation would have an unacceptably destructive impact on the funding of supported housing. The new Secretary of State, Harriet Harman, acted quickly to safeguard threatened provision by introducing the far broader Interim Housing Benefit scheme (DSS, 1997). For a limited period, the scope of Housing Benefit to meet charges for general counselling and support was substantially widened to the community-care-friendly terms prevailing in the first years of the Housing Benefit scheme in the 1980s.

This had one significant limitation. Those who benefited were 'existing and future tenants of *existing* supported housing provision'. This did not resolve the insecurity prevailing over the development of new schemes; and it did not remove the anomaly that excluded many adult placement and supported lodging schemes which used property in the private rented sector. This has, however, been largely remedied by the Interim Scheme's successor, the Transitional Housing Benefit Scheme, designed to broaden provision further in order to identify all the relevant supported housing charges which can then be transferred into the 'Supporting People' scheme, however it is constituted, in 2003 or later. The scope of this, and how it relates to other strands of provision, is examined below.

As a result of the uncertainty over much of the 1990s, many decisions to register or not to register as residential care were made for essentially funding reasons, as described in successive research reports for the Joseph Rowntree Foundation and others between 1995 and 1999 (Griffiths, 1995, 1997; Watson and Griffiths, 1999).

As much of this research describes, tenants in supported housing provided by private landlords were particularly hard hit by this succession of changes combined with other measures to control Housing Benefit expenditure in the private sector, implemented between 1996 and 1997: the introduction of the Local Reference Rent in January 1996, the ending of the top-up of this device in October 1997, and the introduction of the Single Room Rent restricting the Housing Benefit of young people in private rented accommodation in October 1996, which meant that the benefit of many vulnerable young people was hit by a total of four restrictive measures over that period. The new Housing Green Paper proposes some measures to moderate the negative impact of the Single Room Rent (DETR, 2000b). The overall effect on the size of the private rented market, and its relevance to 'Supporting People', are discussed briefly in Chapter 6.

Meanwhile, the scale of spending on support charges, as a basis of so many of these changes through the 1990s, remains clear. The 'Supporting People' review in December 1998

was obliged to use an embarrassingly wide estimate of total spending in the support sector of 'between £350 million and £750 million' – so wide because of a complete lack of certainty about the level of Housing Benefit spending. Attempts to remedy this are discussed in Chapter 5.

The next chapter will examine how the Transitional Housing Benefit Scheme relates to parallel strands of provision and current policy development, particularly in its use of crucial defining terms for demarcation.

4 Personal care: a pivotal function and definition

Personal care and the interface between supported housing and residential care

Thoughout this debate, the term 'personal care' has functioned as the 'frontier' of supported housing. It has been the position up to now that, under the Registered Homes Act 1984, if personal care and board are provided, then the accommodation should be registered. Personal care was defined thus:

> *In this part of the Act … personal care means care which includes assistance with bodily functions where such assistance is required.*

Box 4 The Care Standards Bill, 2000
The Care Standards Bill, currently going through Parliament, will repeal the Registered Homes Act, but retain the same definition of personal care. It appears to be the intention to use the Act to introduce a standards regime that will be addressed to residential homes but also, for the first time, to domiciliary care.

Receiving board will no longer be a condition for registration. The implications of this are dealt with separately in Chapter 7.

Under both the Registered Homes Act and the Care Standards Bill, once the accommodation is registered, the funding streams and the possibilities of independent living are changed radically. In essence, accommodation is paid for through the Income Support residential allowance (except in local authority homes – and see discussion of changes planned in Chapter 7); the resident is entitled to Income Support once his or her own resources have been taken into account (though, in local authority homes, the entitlement is restricted – see Chapter 7); the Social Services community care funding stream is available; and, if the financial assessment includes social security benefits, the resident is permitted to retain a personal expenses allowance of £15.45 per week, the rest being paid in fees to the home. The inadequacy of this amount to meet any aspiration to independent living has been widely remarked.

On the other side of the frontier, where personal care is not deemed to be provided in the accommodation, lies unregistered supported housing, including sheltered housing for older people (it should be added that personal care which is *not* attached to the provision of accommodation, for example through domiciliary care, does not lead to registration). This is the territory covered by 'Supporting People'. There is a tenancy or licence, Housing Benefit is payable, as are disability benefits in most cases, and the full amount of Income Support, plus any social services funding to meet support needs that might have been allocated through community care assessment. Generally, the tenant's disposable income is significantly higher than it would be in residential care, resulting in substantially more potential for independent living.

However, as all concerned with this field will know well, it is not that simple on the ground.

First, the proportion of the tenant's income which is taken to meet charges varies very

substantially (Watson and Griffiths, 1999). This is an important issue, discussed in Chapter 7.

Second, the 'frontier' of the definition of personal care, and the use of it, is very fluid and has been for a considerable time. In its 1994 fieldwork, the Rowntree-funded research 'Supporting Community Care: the Contribution of Housing Benefit' (Griffiths, 1995) found more than 20 definitions of 'personal care' in operation by Social Services Inspection Units. This meant that it was quite arbitrary whether accommodation was registered or not. Much of this fluidity stemmed from the volatility in interpretation of Housing Benefit regulations described above; withdrawal, or threatened withdrawal, of Housing Benefit for general support and counselling often led to registration for funding reasons. It also stemmed from an inadequacy in the Registered Homes Act as a trigger to determine benefit entitlement.

The Act's dual function – a mechanism to determine regulation and financial regime – has not been critically addressed, because, while the Department of Health has given prolonged attention to the issue of regulation, leading to the measures of the Care Standards Bill, the trigger that governs the user's financial regime lies in the power of the DSS, and has received little attention from the Government. In this respect, there has not been, and still is not, an integrating vision of independent living that goes beyond the scope of the powers of the Department of Health.

Furthermore, no explanatory guidance imposed order on the unhelpful 'inclusive' clause of the Act's definition: 'personal care means care which includes assistance with bodily functions'. Unsurprisingly, there was litigation. By the time of the fieldwork for *Loose Change* in 1998, the manipulation of the definition of 'personal care' for funding reasons was very common, mainly towards non-registration where adequate Housing Benefit was likely to be available for support services, and particularly where the authority, or the provider, was committed to a regime more consistent with the aspiration to independent living.

> *Several housing associations reported … that the decision on whether to register a new scheme as a residential home was effectively made by the local social services authority. In one case, a home had recently been de-registered as the purchasers in social services did not want to make the additional topping-up payments required for it to be viable and considered that it would cost them less to pay the care/support costs separately in a non-registered scheme … Despite the major uncertainties surrounding the funding of unregistered supported housing, it appears that many housing associations have established provision which offers high support but which is not registered as residential care. Just over half of the forty two associations responding to our survey said that they had such examples. The most common reason for not registering high support schemes was that residential care registration was seen as inimical to the aims of independent living and the policy intentions of community care. The system is seen as too inflexible and institutionally focused, in terms of both the physical design requirements and the way the service is financed. The fact that residents are not eligible for ordinary benefits and are left with a personal expenses allowance of only £14.45 per week (now £15.45) can be a significant factor in the decision not to register.*

'Staff feel that the scheme operates better and can enable more easily by not being registered.' 'The philosophy of care is not conducive to a registered home' (Housing association managers). (Watson and Griffiths, 1999)

With movement both ways across the 'personal care frontier', for funding reasons not necessarily associated with the needs of the resident, it would be expected that there is now a considerable number of anomalies that should be resolved by a coherent new dispensation. One would also expect that consistency of definition should be a requirement of the new initiatives of the Government. Consistency in decision-making on registration itself should result from the establishment of the new National Care Standards Commission in 2002, which will govern interpretation of personal care. However, this will only work in terms of its financial consequences if the Care Standards Bill's definition of personal care is part of a fully inter-departmental resolution of the contradictions described in this report. This means recognising in particular the financial consequences of registration for the user in the context of the Government's commitment to promoting independent living.

Below, the main initiatives are examined for their use of the 'frontier' of personal care (leaving out the issue of domiciliary care which is *not* attached to the provision of accommodation), and the implications of each are considered.

Scope of the Supporting People grant

'Supporting People' uses the term 'personal care' as a boundary marker, though no definition is offered:

(9) Particular examples of services that it is proposed should be funded through other, existing, mechanisms include:

- *personal care services*

(15) It is not expected that the proposed specific grant would normally fund services provided by residential care homes.

The use of the phrase 'it is not expected' and the word 'normally' above suggests that the demarcation is not quite hard and fast. This slight equivocation continues in a new DETR booklet on Supporting People (DETR, 2000a):

Support within this programme is primarily delivered to people whose needs do not require intensive personal care.

'Intensive' personal care is not the term used in the Registered Homes Act or the Care Standards Bill; and the word 'primarily' does not offer firm definition. This reflects the uncertainty of reality on the ground, where, for example, some disabled people with quite intensive needs for physical care may be receiving Housing Benefit in unregistered accommodation and employing their own carers, and many older people may be in unregistered 'very sheltered' housing, and similarly receiving full benefits. However, this flexibility does not sit easily with the hard demarcation of the registered accommodation financial regime, which so sharply restricts the disposable income of those who are caught in it. This will be a major theme of this review's findings.

Royal Commission on Long Term Care for the Elderly

The Royal Commission, uniquely, engages in a lengthy attempt to define personal care. The independence of the Royal Commission should be emphasised here: clearly, the definition has no official status, but is given because it is the most detailed recent exposition of the factors involved from an authoritative source. While the Government has rejected the Royal Commission's recommendation that all personal care should be free, this does not negate the importance or relevance of the discussion that follows.

Box 5 The Royal Commission on Long Term Care for the Elderly: definition of personal care (Royal Commission on Long Term Care for the Elderly, 1999)

6.43 We deliberately do not use the term 'health care' or 'social care' because of the confusion which surrounds those terms and their association with particular agencies or forms of funding. Personal care is that which directly involves touching a person's body (and therefore incorporates issues of intimacy, personal dignity and confidentiality), and is distinct both from treatment/therapy (a procedure deliberately intended to cure or ameliorate a pathological condition) and from indirect care such as home help or the provision of meals. This type of care is the main source of contention in the debate between health care and social care. It falls within the internationally recognised definition of nursing, but may be delivered by many people who are not nurses, in particular by care assistants employed by social services departments or agencies.

6.44 Personal care, because it directly involves touching a person's body, incorporates issues of intimacy, personal dignity and confidentiality. Because of risks associated with poor personal care (e.g. risks of infection or skin breakdown), it is important that when the level or type of care needed becomes greater than can normally be provided at home by a relative or informal carer, careful assessment is made of how best it can be provided and by whom. It therefore differs qualitatively from living costs and housing costs. In recommending that personal care should be exempted from means testing, we are not recommending that this should happen on demand. Far from it, we have stressed throughout our report the importance of proper assessment of need.

Personal care would cover all direct care related to:

- personal toilet (washing, bathing, personal presentation, dressing and undressing and skin care);
- eating and drinking (as opposed to obtaining and preparing food and drink);

Continued overleaf

- managing urinary and bowel functions (including maintaining continence and managing incontinence);
- managing problems associated with immobility;
- management of prescribed treatment (e.g. administration and monitoring medication);
- behaviour management and ensuring personal safety (for example, for those with cognitive impairment – minimising stress and risk).

Personal care also includes the associated teaching, enabling, psychological support from a knowledgeable and skilled professional, and assistance with cognitive functions (e.g. reminding, for those with dementia) that are needed either to enable a person to do these things for himself/herself or to enable a relative to do them for him/her.

6.45 We acknowledge that this definition could be regarded as on the tight side. It would, for example, exclude costs attributable to:

- cleaning and housework;
- laundry;
- shopping services;
- specialist transport services (e.g. dial-a-ride);
- sitting services where the purpose is company or companionship.

6.46 However, the Commission have had to draw the line in a practical way. We consider it reasonable that the state should not meet such costs other than through means-testing, on the basis that although they may contain an element of care they are in principle 'living' costs.

Thus, the emphasis of the Royal Commission's extended definition falls on physical care, with some important exceptions. There are clearly elements of distinction here between personal care and nursing care; these are dealt with below, as a separate interface.

The Royal Commission's definition falls into significant difficulty as a result of its choice of three categories of definition: housing, living and care. It finds no easy room for the substantial area of support activity covered by 'Supporting People' and the Transitional Housing Benefit Scheme.

To deal only with 'Supporting People' for now, areas considered *not* to be personal care and therefore within the scope of the 'Supporting People' programme include managing anger and behavioural problems, general counselling and lifeskills training. By the Royal Commission's definition, behaviour management, ensuring personal safety, associated teaching, enabling and reminding for those with dementia *are* personal care.

The implications of adopting this definition in relation to the Transitional Housing Benefit Scheme are examined below.

Transitional Housing Benefit Scheme: amendment regulation and DSS guidance (DSS, 1999a)

This section deals first of all with the boundary

of 'personal care' set by the Transitional Housing Benefit Scheme. It goes on to give wider consideration to how effective the Scheme will be in awarding benefit to meet the cost of charges for support. Where this is not related to personal care, it is dealt with in Chapter 5.

Some uncertainty is created by the definition of supported accommodation in the Housing Benefit Amendment Regulation which creates the Transitional Scheme:

> *supported accommodation, where the landlord is …*
>
> *(i) a housing authority … non-metropolitan county council, registered social landlord … registered charity or voluntary organisation … where that landlord (or someone acting on that landlord's behalf) also provides the claimant with* care, support or supervision ** (1); or*
>
> *(ii) where it is occupied by a private sector tenant who holds a valid community care assessment*
>
> *(1) when deciding whether care, support or supervision is provided, those words should be given their normal, everyday meaning.* (DSS, 1999a, *author's emphasis)

It is perhaps tempting fate, given the history of the past seven years and the discussion above, first to say that accommodation is eligible for Housing Benefit if it offers 'care'; and, second, to suggest that 'care', even without the adjective 'personal', should be given its 'normal, everyday meaning'.

The regulation goes on to declare that support charges for general counselling and support, cleaning of rooms and windows, and an emergency alarm system are eligible under the Transitional Scheme where the claimant is living in supported accommodation. For the purpose of this discussion, we will confine ourselves to the first of these three.

Under this heading, the following charges are eligible where they are provided to a person living in supported accommodation by, or on behalf of, their landlord, as the Guidance explains:

> *Para 2(a): Charges which assist the claimant with maintaining the security of the dwelling: for example, helping ensure the security of the home (eg by reminding the claimant to lock up) or controlling access.* (DSS, 1999a)

There is no difficulty with this, and the Guidance points to its application to specific types of need, such as a women's refuge:

> *Para 2(b): Charges which assist the claimant with maintaining the safety of the dwelling (including making arrangements for the checking of the claimant's own appliances where these could pose a safety hazard): for example … ensuring that the claimant is able to use appliances (such as cooker and iron) safely.* (DSS, 1999a)

Two points should be made about this. The first is that it would conflict with the Royal Commission's definition of 'personal care', which includes 'ensuring personal safety', and 'associated teaching, enabling'. This is relevant because the Guidance, too, later adopts an interpretation of the term 'personal care' which is wider than that used in the Care Standards Bill. It contributes to the continuing confusion over eligibility for the Transitional Housing Benefit Scheme and the need for registration – a confusion that needs to be resolved before it is

carried forward into the 'Supporting People' programme.

Secondly, throughout the Guidance, examples are used in a way that suggests limitation of the scope of the Regulation. This is a common feature of Housing Benefit guidance. Literal-minded Housing Benefit officers commonly take the examples in DSS guidance for the substance of the regulation. But the regulation can often be rather broader than the example; an important instance is that very often staff in supported housing spend time ensuring that tenants do not leave lighted cigarettes around the house or room (especially where there are mental health problems). This is not mentioned above. The *regulation* should be emphasised, since its scope can be obscured by the use of examples.

This becomes a major problem in Annex B of the Guidance, which lists 'Support charges eligible under the Transitional HB Scheme'. It represents the examples given in this Guidance as:

> *Service Charges for General Counselling and Support which fall under paragraphs 2(a) to (d) of Schedule 1B to the Housing Benefit Regulations are eligible under the transitional Housing Benefit scheme…* (DSS, 1999a)

This is wrong and this list will be heavily used by Housing Benefit Services. They are not *the* eligible service charges, they are *examples* of the eligible service charges.

> *Para 2(c): Charges directed at helping the claimant comply with those terms of their tenancy agreement concerned with:*
>
> *(i) nuisance: for example, dealing with disputes with neighbours;*
>
> *(ii) rental liability: for example, assistance with budgeting/debt counselling; assistance with claiming benefits;*
>
> *(iii) maintaining the interior of the dwelling in an appropriate condition: for example, helping with minor repairs (e.g. changing lightbulbs, unblocking sinks etc.)* lifeskills training in areas such as kitchen hygiene including advice on, or supervision of, food preparation or food storage* *to preserve the condition of kitchen units and other appliances;*
>
> *(iv) the period for which the tenancy is granted: for example, those resettlement activities necessary to enable the claimant to relinquish the tenancy and to move on to accommodation where less support is required.* (DSS, 1999a, *author's emphasis)

The same concern with examples applies in paragraph 2(c). Where nuisance is exemplified as 'dealing with disputes with neighbours', it should be pointed out that you do not need a dispute to be dealing with nuisance; you may, for example, be preventing noise or nipping it in the bud. The clauses underlined would be defined as 'personal care' under the Royal Commission definition ('teaching, enabling, ensuring personal safety') and, using such a definition, accommodation would be registered, resulting in a sharp fall in the user's disposable income; however, it does not appear that this will be the case under the Care Standards Bill, which uses the Registered Homes Act definition confined to '(including) assistance with bodily functions'.

The last subsection (iv) is an important 'open' provision which raises questions, not least about the personal/nursing care issue. In

practical terms, an important part of rehabilitation in supported accommodation would include advice (not necessarily assistance) concerning personal hygiene; and reminding to take medication (particularly important in relation to mental health and drug rehabilitation). However, assistance with personal appearance or hygiene is designated 'personal care' by Annexe B of the Transitional Housing Benefit Scheme Guidance (and by Schedule 1 of the Housing Benefits (General) Regulations) and is thus excluded; as is counselling 'relating to mental disorder, mental handicap, … past or present alcohol or drug dependence', though in taking these words from Schedule 1, the Guidance crucially omits the words 'medical expenses' in the original exclusion, thus broadening it significantly.

But what are the lines here between 'advice', 'counselling' and 'assistance'? What if the counselling is of a non-professional nature, such as advising a tenant that taking drugs is a bad idea, and it is a 'resettlement activity necessary to enable the claimant to relinquish the tenancy and to move on to accommodation where less support is required'? Surely supported housing which is not residential/nursing care is frequently going to cross all of these lines, often in the daily activities of one support worker. This raises issues of demarcation which will not go away; and they are not pedantic, because large sums of money depend on them. The list of 'examples', inadequately representing the provision, has already been included in a joint circular to be sent to all the social services departments in the country.

Early consultation with local authorities suggests that some are determined to apply the full scope of the regulations and will not be confined by the way examples are used as discussed above. However, anecdotal evidence suggests that some district councils are taking a more restrictive view, guided by a wish to restrict any unsubsidised Housing Benefit rather than by the Government's aim that the Transitional Housing Benefit Scheme should 'expand coverage' by Housing Benefit in this area. Since the scale of awards under the Scheme will determine the size of the 'Supporting People' budget, non-award of benefit under these circumstances may have important ramifications for the 'Supporting People' programme. Any emerging differences between district and unitary authorities will need to be watched.

In the light of these difficulties, the discussion of solutions later in this report will be based on the view that there is a choice: either there has to be an agreed definitional interface between departments and disciplines; or some other route that relies less on definition has to be found, recognising that one worker will often be providing advice, counselling, assistance and personal care in the space of an hour.

Personal care and nursing care – a mirror image of the 'Supporting People' debate

This centrality of the term 'personal care' in current developments is reinforced by the 'other' interface which has up to now been considered in isolation from the 'Supporting People' debate: the interface between personal care and nursing care. This has been best articulated in various policy statements by the Royal College of Nursing, and much of what follows is derived from these and personal

communications from the Royal College (Royal College of Nursing, 1999). The breadth of the implications of current policy and proposals underlines the importance of a farsighted approach to definition.

The issues have been crystallised by a 1999 Court of Appeal case. In this section, further implications of the Care Standards Bill are also considered.

The nursing home anomaly

Nursing care is provided free in hospital to those with acute or very specialist medical needs. Nursing care is also provided free, through NHS community nursing services, to those in residential care homes or in their own homes. However, with the move towards community care, most people in need of long-term nursing care are now placed in nursing homes, often having been moved there from hospital. There, responsibility is usually passed to local authority social services departments which means-test for all services. In other words, the very people who are assessed as needing high levels of nursing care are unique in being exposed to charging for their health needs. Some 42,500 nursing home residents pay for all or some of their nursing home costs, including nursing home care. The rest – some 115,000 – are paid for by social services departments, not the NHS.

A number of national bodies have questioned the legality of this situation, expressing concern about inequity, lack of focus on rehabilitation, growing costs and inefficiencies. An important focus for this concern was the Coughlan case.

The Court of Appeal judgement: *R* v. *North and East Devon Health Authority ex parte Coughlan*, July 1999

The Department of Health's guidance (Department of Health, 1995) drew a distinction between 'specialist' nursing services, including 'advice such as continence advice and stoma care', and 'general' nursing services. It suggested that specialist nursing should be provided by the NHS, while local authorities should provide general nursing. It also stated that 'the statutory responsibilities of health authorities to meet healthcare needs are unchanged'.

Health authorities across England and Wales interpreted this guidance in different ways. Many developed local eligibility criteria that state explicitly that the NHS will not fund 'general' nursing.

North and East Devon Health Authority assumed that under Department of Health guidance it was no longer responsible for purchasing long-term nursing care. Its belief that this was now the job of social services departments was clearly reflected in the eligibility criteria it developed. These criteria stated that it would not fund 'general' nursing care, which it defined as 'including nursing observation, care and treatment which requires a nurse in constant attendance'.

Box 6 The Coughlan case: the Court of Appeal's finding

The Court made it clear that nursing care should be provided under the NHS Act 1977. The crucial part of the ruling hinged on Section 21 of the National Assistance Act 1948, under which local authorities

have a duty to provide accommodation for certain vulnerable groups. The Appeal Court judgement stated that social services can provide some nursing services as part of this Act but only if they are 'merely incidental or ancillary' to the provision of the accommodation.

The refined test is as follows: where the primary need for nursing home accommodation is a health need, the nursing services must be provided by the NHS. They cannot be passed to social services. Where the secondary need for nursing home accommodation is nursing, they may be provided by either the NHS or social services.

There are two new factors that the Court of Appeal has said health authorities must take into account when determining whether the NHS should pay for nursing home care. The first factor, referred to as the 'quantity test', looks at whether the health need is 'merely incidental or ancillary to the provision of the (local authority) accommodation'.

The second factor, known as the 'quality test', looks at the type of service provided. The local authority can only have responsibility and means-test if the nursing service is one that a social services department can usually be expected to provide as part of a social service package.

The Court found that the eligibility criteria being used by North and East Devon Health Authority were unlawful. In response to the Coughlan case, the Health Authority published new eligibility criteria in March 2000. It has established a committee to look at past cases. Two-hundred-and-fifty cases have been identified which may need to be reassessed for NHS funding. The review is to be completed within six months.

The findings of *Rationing by Stealth – a Review of the Legality of Health Authorities' Continuing Care Policies in England and Wales* (Royal College of Nursing, 1999)

Barristers working on behalf of the Royal College of Nursing (RCN) undertook a legal analysis of a sample of health authorities' continuing care policies in the light of the Court of Appeal judgement, which in their view provided, for the first time, some clarification on NHS and social services responsibilities in this area. Their finding was that almost 90 per cent of the health authorities sampled were using eligibility criteria that were likely or highly likely to be unlawful. The implications of this would be that thousands of older people are being means-tested for nursing care that should, legally, be provided by the NHS, free at the point of delivery.

Several health authorities listed the 'tasks' that they exclude from NHS care, commonly including artificial feeding, pain control, care of the dying, catheter care and stoma care. This is in contravention of the Court of Appeal decision. Many contain the circular definition of (NHS responsibility where there is) 'a need for nursing care going beyond what can be expected to be provided in a nursing home'.

The RCN comes to the following conclusion:

The assessment of individuals' need for health and/or social care has been a constant theme in the continuing care debate. Nurses have long argued that distinctions between the two are unworkable. All nursing encompasses both medical and social aspects which makes a simple 'specialist' (health) and 'general' (social) separation impossible. As medical and social care become increasingly polarised, due to the NHS versus social services funding issues, nursing is in danger of disappearing. When the links between health and social care are ignored, the care of older people is in danger of being broken down into a series of tasks and becoming fragmented. This undermines the holistic nature of professional nursing care and the great benefits this brings to patient care.

The inflexibility in the current system between long term care provided in hospitals, nursing homes, residential homes and individuals' own homes reduces the potential for maintaining independence and rehabilitation. This compartmentalised approach to long term care also means that, even in the short term, many older people receive the wrong sort of care – for example, being admitted to hospital with medical problems much better (and more cost-effectively) cared for in their own home or care home by community nurses.

The parallels are striking. Just as in the case of support, the 'frontier' of personal care creates a barrier to rational and fluid allocation of resources and recognition of the role of staff in responding to residents' needs beyond a narrow cost definition. The RCN is arguing that false separation of functions that accompany nursing care 'reduces the potential for maintaining independence and rehabilitation'. An integrated solution which confronts anomalies rather more rigorously would seem to beckon.

The Care Standards Bill

The Court of Appeal quashed the idea that there can be any difference between general and specialist nursing care in relation to funding. The RCN now believes that the Government is committed to pursuing a new approach to personal care as a substitute for general nursing. It has in the past expressed concern about standards of home care; an increasing degree of personal care provided by home carers demands some degree of response to clients' health needs. The RCN wants to see clear recognition of this, and acceptance that it requires a degree of training and a role for registered nurses, whatever the parameters of the definitions finally adopted (Royal College of Nursing, 1998).

The Care Standards Bill changes the framework for these decisions. The Registered Homes Act 1984 required homes to register according to whether or not nursing services were provided. Where a home was registered as a residential home but needed some on-site nursing input, the owners had two options. They could either re-register the home as a nursing home or they could employ a nurse but call them something else, e.g. learning disability support worker. The Care Standards Bill deliberately removes this distinction. All homes will in future have the flexibility to employ nurses as and when they are needed.

The way forward

The Secretary of State for Health announced in December 1999 that there would be guidance which would 'stress the need to align social

services criteria with NHS continuing care criteria…'. The Department of Health has been carrying out consultations on the best way of doing this. The difficulty is how to align the provision of services by local authorities that are means-tested with NHS services that are free in a way that is clear and logical, and at a cost which is acceptable to the Government.

This is related to the deliberations over the Royal Commission's recommendation to provide personal care at no cost to the user. The RCN argues that, with a clear definition of nursing, it can now be provided irrespective of the setting, i.e. including in residential care homes. It argues that assessment of nursing care by a registered nurse is pivotal. Once a nursing need is established, then a new band of specialist nurses can also assess the quality of nursing care in a more comprehensive way than previously. The Government has accepted this approach and the RCN's case that nursing care should be free (Department of Health, 2000a).

Once the skilled, supervisory role of registered nurses is established, it has the potential to place tasks, previously understood to be within the remit of nursing, more firmly in the 'personal care' domain, completing a separation of nursing tasks which the RCN has opposed, as we have seen. Ironically, this offers a solution that is economically more acceptable to the Government because of the lower cost of personal care, while offering the RCN a key role in a more integrated process for which it has long argued. 'Specialising' nursing in this field also has the effect of clarifying the interface between personal care and nursing care. It has also enabled the Government to improve and extend free provision in one area, nursing care, thereby defusing pressure to make provision free in another, personal care.

At the time of going to press, it appears that the RCN has refused to accept this bait. It argues that the Government's decision not to make personal care free exacerbates the creation of 'an artificial divide between nursing and personal care based on whether the care is provided by a registered care nurse or a healthcare assistant'. Because services from the latter will be means-tested, there would be a perverse incentive not to delegate work to care assistants. This would be contrary to the Government's intentions: the decision not to make personal care free created an uneven playing field which would make the scheme unworkable.

5 Accommodation and support: 'Supporting People' and the Transitional Housing Benefit Scheme

Intensive housing management

The report *Loose Change* (Watson and Griffiths, 1999) examined the interface between mainstream accommodation costs and intensive housing management, and the difficulties this creates for the new scheme:

> *It has to be recognised that many providers of supported housing have placed intensive housing management costs within mainstream rents, so that they would not be exposed to the volatility created by the latest judicial review or by local re-interpretations of Housing Benefit eligibility. This was especially apt where the management functions were ordinary but they happened to be intensive due to the nature of the resident group. Many housing associations pursued this route, often with cooperation and even guidance from local authorities' benefits services, which had no wish to see projects fail while there was a viable and reasonable funding route. The research findings demonstrate the wide variation in Housing Benefit payments and in alternative sources of funding for support resulting from this.*
>
> *… It is an area that will need to be addressed specifically, with a distinction to be made between 'ordinary housing management costs' and intensive housing management and support costs … Otherwise, one major conduit of resources resulting from the recent volatility will not be integrated into the new scheme.*

With the Transitional Housing Benefit Scheme now in operation, it appears that a number of aspects of 'intensive housing management' should fall within its terms. However, this has not ended the considerable variety in providers' allocation of these costs. Understandable historic variation in provider behaviour, coupled with variable degrees of faith in the 'Supporting People' programme, leads to 'tactical loading' of costs either in mainstream rents, or in the Transitional Scheme. At its worst, this may be reminiscent of the judgements made over the past years as to where to apportion charges for support and counselling. Indeed, SITRA were giving guidance to their members on this almost as soon as the Transitional Housing Benefit Scheme Guidance was published:

> *Characteristics of schemes where it may make sense to weight costing to housing:*
>
> - *crisis accommodation, where tenants unlikely to work, e.g. refuges, direct access hostels*
> - *low priority client groups such as sex offenders where likely to be little relationship with local authority*
> - *low to medium rents*
> - *special schemes not serving local client group*
> - *local authority already contributing high level of funding*
>
> *Where it may make sense to weight costing to support:*
>
> - *rents very high*
> - *residents have a real chance of work/training/education (on the assumption that unlike*

Housing Benefit, the Supporting People Grant will not be means-tested, so will involve less disincentive to work)

- *host local authority keen to prioritise client group*
- *scheme mainly serves local people.* (SITRA, 1999)

These lists are given in full because they illustrate the possible survival of quite major tactical reallocation of costs if 'Supporting People' does not address these issues. Anecdotal evidence suggests that some months into the Transitional Scheme, numbers of providers are continuing to load support costs into rent because they have more faith in Housing Benefit as a route to pay for support.

Short-term decisions may lead to adverse effects for schemes that have opted for high rents if, for example, Housing Benefit awards are scrutinised more closely after implementation of the 'Supporting People' programme and the disappearance of the Transitional Housing Benefit Scheme. However, a proposal to fund support in short-term accommodation entirely through grant, that is without either charging or means-testing, would probably create a strong incentive to opt for the Transitional Housing Benefit Scheme rather than placing the cost of intensive housing management in rent.

'Supporting People' client groups and higher housing costs

This leads us on to the mainstream housing costs left behind once support costs are removed. It is not unreasonable to suppose that Housing Benefit assessment of rents in the private and RSL (registered social landlord) sectors may be rather less flexible than before, since it may be assumed that there is no remaining need for consideration of the costs of support. However, it is important to emphasise that for some client groups there are mainstream housing costs, clearly definable as rent, that are going to remain higher, sometimes significantly so.

This concern applies to accommodation that may receive heavy wear and tear, for a wide range of reasons, both behavioural and related to physical conditions. The costs listed below may be higher in accommodation for people with mental health problems, learning disabilities, young people with behavioural problems, some physical disabilities, and people who misuse drugs and alcohol. Accommodation for other purposes may house people with one or more of these problems, such as accommodation for ex-offenders, homeless people and refuges. The charges that may result in higher rents include:

- replacement of furnishings
- the cost of minor repairs due to excessive wear and tear (e.g. decorating communal areas)
- cost of replacement of equipment and cost of servicing
- cleaning of communal areas
- void provision in accommodation with high turnover.

There needs to be specific recognition of this as 'Supporting People' is implemented, or there will be situations where support is provided for,

but essential housing costs are not. Indeed, the 'Supporting People' programme may itself trigger difficulties, because it has been suggested that some RSLs (registered social landlords) have hidden higher housing costs of these kinds in Supported Housing Management Grant (SHMG). The transfer of SHMG to the 'Supporting People' programme may leave some of those costs high and dry (Linney, 2000).

It has been suggested that one way to address this issue would be to allow some premium in the Social Housing Grant (SHG) rates to finance these extra expenses, through a capitalisation of the revenue costs. This would mean that less of the rent income would be needed to finance any mortgage, and thus more would be available to meet other housing costs.

'General' counselling and support

One operational and definitional problem is raised by the paragraph in the Transitional Housing Benefit Scheme Guidance on 'general' support and counselling (DSS, 1999a). It is a perspective resurrected from past guidance:

> *24. You are also reminded that only charges for general counselling and support are eligible for HB. As explained in earlier guidance, this implies that support would vary on a day to day basis, according to the claimant's needs with no particular qualification required to provide this. Any counselling, including group therapy sessions, aimed towards a specific need would be unlikely to be general.*

This has always been based on a logical and linguistic fallacy, and provides a basis to refuse benefit effectively on the grounds that any counselling, by its existence, ceases to be general and becomes particular. The normal meaning of counselling is also a difficulty, as it includes 'advice'. Regular counselling can be non-specialist, e.g. regular meetings to discuss how the tenancy is going; and specialist counselling (e.g. therapy) can be irregular. Irregular counselling can also be specific (i.e. not general) but not specialist, e.g. reminding to put cigarettes out. This is a hangover from the past restrictive culture of Housing Benefit in this area which is not helpful, working against the grain of the positive intentions to 'expand coverage' given at the beginning of the Guidance.

Private sector tenants outside the main community care groups

The Housing Benefit Amendment Regulations establishing the Transitional Housing Benefit Scheme include private sector tenants where they have a valid community care assessment. As a result, at present, supported lodgings schemes for ex-offenders, and many care leavers who have reached the age of 18, fall outside the Scheme, unless they have community care needs. There is a danger that it might drive some marginal groups into the 'community care culture' when they ought to be moving in an opposite direction.

It is estimated by the Department of Social Security that between 12,000 and 19,000 tenants will be affected by this procedure nationally. However, the DETR confirms that support provided to ex-offenders will be included in the 'Supporting People' programme. Though this will be without the Housing-Benefit-funded 'dowry' of funding for support charges, some spending at present going to meet ex-offenders' support charges direct from Home Office

funding will be added to the 'Supporting People' budget.

There is concern that this use of community care assessment as a gateway to the Transitional Housing Benefit Scheme will create extra workload for social services departments; about the appropriateness of this role; and about the impact of extra assessment uncovering additional demand and need for community care services.

An additional group of services is brought within the scope of the Scheme 'where the dwelling is one of a group of dwellings which the landlord normally lets to people in need of general support and counselling', and where the support is provided by a resident warden or by a non-resident warden with a system for calling him/her. Examples of these additional services given in the Guidance include 'help with shopping/errand running; chatting (i.e. social chatting not connected with other services); arranging social events; and other good neighbour tasks (e.g. welfare checks)'.

This is welcome; but there is a problem with the phrase 'group of dwellings'. It excludes adult placement and supported lodging schemes where the landlord is a carer perhaps looking after one person, i.e. not a 'group of dwellings which the landlord normally lets'. This would exclude tenants in these schemes from an important extension of benefit entitlement, for services that seem particularly appropriate to adult placement schemes. Although some providers of supported lodgings on more than one site should be able to benefit from the extension (if their tenants have community care assessments), the National Association of Adult Placement Schemes (NAAPS) believes that this phrasing results in a significant and unfortunate omission for adult placement schemes.

A large proportion of schemes have become registered for funding reasons because of the disproportionately negative effects of amendments to the Housing Benefit scheme since 1994, and NAAPS believes this has reduced their users' capacity for independent living, as well as causing some schemes to close. For detailed discussion of the impact on these schemes, see Griffiths (1997).

However, even without the extension described above, the Transitional Housing Benefit Scheme offers a substantial improvement to the funding of adult placement and supported lodging schemes. There is already evidence of one scheme discussing the possibility of moving back over the registration frontier in order to have access to Housing Benefit. Others may follow. This is yet another example of the funding-driven and arbitrary nature of the current registration regime.

Definitions into action: the skills demanded of HB officers

The Guidance of the new scheme (DSS, 1999a) requires that Housing Benefit officers have to assess whether 'the amount of an eligible service charge [is] excessive, having regard to the cost of comparable services'. The excess amount has to be assessed and deducted from the Housing Benefit (Para. 17). Officers are to:

> *take several factors into account:*
>
> - *the needs of the tenant …*
> - *high charges may not be excessive: the fact that a charge for a support service is high does not mean that it is excessive.*

For example, charges for support services to tenants in women's refuges, particularly in respect of maintaining the security of a dwelling, may be higher than charges for support services typically provided by a warden to elderly tenants in sheltered housing.

- *comparable charges: many providers are only partially dependent on charges for rent and support and may also receive funding from other statutory or charitable sources. It is therefore not sufficient to compare one charge with another; instead you should consider whether the overall cost of that service in that particular scheme is excessive when compared with the overall cost of similar services in similar schemes. You should also remember that the unit cost of providing support services may be higher in small scale schemes than in those with a large number of supported accommodation units.*

This is given in full because it conveys the analytical sophistication demanded of Housing Benefit officers in this process, particularly in assessing and comparing specific service costs in a wider financial context. If quality and consistency of decision-making is to be achieved, this will require substantial training input and professional support. This is recognised to some extent in the Guidance (with a commitment by the DSS to workshops across Great Britain). The question is whether such a demand of Housing Benefit officers is realistic.

Informing 'Supporting People' from HB claims

An information-gathering process has been set up through the Transitional Housing Benefit Scheme to establish budget levels for the 'Supporting People' programme. This will involve analysis of numbers of claimants and expenditure levels locally. It is intended that this will then inform the establishment of commissioning procedures and budgets at local level. However, information on benefit spending from this source will not be available until late 2000. Eligible rent for support services, roughly equivalent to benefit spending, will be broken down by claimant group but not available until the second half of 2001 (DSS, 1999a). Other research has been commissioned by the DETR to try to achieve early and robust estimates of numbers in the programme, and possible demand. This will need to inform decisions about the charging scheme to be adopted (see Chapter 7).

The breakdown by client group covers individual categories and does not allow for recognition of multiple needs. The latter are very common and the choice of only one primary condition may lead to some distortion in estimates of numbers and expenditure. Research for the DETR will identify the likely balance of multiple problems among the client groups.

6 Housing Benefit reform

'Supporting People' and wider questions of Housing Benefit reform have common origins in a view favoured by the previous Government, and adopted in the early years of the current administration, that spending on Housing Benefit has been spiralling out of control. In the past year, there has been a distinct moderation of this view, accompanied by a reduction in the sense of both the urgency and the scale of proposals for reform. The DETR's Housing Policy Green Paper's proposals for Housing Benefit are relatively modest, and impact less than expected on the housing circumstances of those whose support needs should be met through the 'Supporting People' programme (DETR, 2000b). The Green Paper suggests that reform of policy on rents is likely to precede any substantial reform of Housing Benefit – and that will be a matter of some years.

However, it is important to take some note of the process of downward revision of Housing Benefit spending estimates, because this has been a matter of some controversy. Housing Benefit spending on support charges will provide the main source of the 'Supporting People' budget. It is likely that the climate of opinion about Housing Benefit spending trends will affect the generosity of future decisions on that budget.

Analysis of differences between budget estimates and actual spending on Housing Benefit suggests that we are no longer caught in 'a relentless upward trend' in the Housing Benefit budget, as the Social Security Minister responsible for Housing Benefit put it as recently as June 1998.

On the contrary, successive budget estimates from the mid-1990s show a series of substantial downward revisions, turning forecast increases into actual falls. The 1998 estimates forecast an increase of £200 million between 1996/97 and 1998/99. Widespread press coverage of the Green Paper for Welfare Reform quoted a forecast increase of £1.5 billion over the same period. The new publication (2000) shows a *fall* of £208 million in the final spending figures in the same period to 1998/99 (DSS, 2000b).

For each individual year, the publications show ever-increasing downward revisions from an original high forecast. For 1997/98 spending, successive government budget publications from 1997 to 1999 revised the total from a planned £11.65 billion in the 1997 publication to an actual out-turn of £11.2 billion reported in the 1999 publication. The earlier estimate, undershot by £438 million, will have helped to set the terms of reference for Housing Benefit reform, but this downward revision is modest compared to the estimates for the following years.

The estimates for 1998/99 were revised downward by £1.2 billion between 1997 and 2000, and those for 1999/2000 by £1.6 billion. The same appears to be occurring in the estimates for the two subsequent years.

This does not inspire confidence in the Government's capacity to forecast Housing Benefit spending. Given the scale of the continual downward revisions described here, it appears very unlikely that the increases still being forecast in 2000 will happen (DSS, 2000a). If substantial revisions are needed, then their policy implications need to be confronted.

The fall in unemployment is a major reason for the downward trend. In addition, there has been a disproportionately sharp contraction in the number of private tenants receiving Housing Benefit. Between November 1995 and

August 1999, the number of tenants living in the private rented sector and receiving Housing Benefit fell eight times more steeply than the number in the local authority and housing association sectors combined – by over a quarter compared to a fall of only 3.2 per cent in the public sector. The caseload in the private rented sector has fallen by a quarter of a million more than if the decline had been at the same rate as in the public sector. The reasons for this and its consequences need to be examined. One is likely to be a higher degree of availability for work among private tenants – in 1995, a higher proportion of those receiving Housing Benefit were registered unemployed than in public sector housing. Another is the high proportion of private tenants who live in the South East, where unemployment has fallen more steeply.

But there is also evidence of a large-scale withdrawal of private landlords from this sector. Two major factors are likely: the fall in the numbers of owner occupiers with negative equity who were renting their homes to cover their costs; and large scale withdrawals following a series of measures tightening Housing Benefit awards to private tenants. The balance of these possible causes raises questions about the supply of rented accommodation at the cheaper end of the market in the twenty-first century. Research to establish this is needed.

This is relevant because many marginalised and socially excluded people use the private rented sector. Its greater flexibility means that it has been available to a highly mobile population, and thus it has functioned as a safety net outside public sector provision for housing with support. Its provision (or any reduction of that provision) is therefore an underlying factor in addressing the objectives of 'Supporting People'.

7 Other related themes

Residential allowance

The standardised 'residential allowance' is the 'housing costs' component of the funding of independent residential care homes, paid through Income Support entitlement. As such, it is an equivalent of Housing Benefit paid by the state, in practice to the provider. The White Paper *Modernising Social Services* concluded that it was an anomaly, creating a financial incentive to social services departments to place people in independent residential care homes. The Government will abolish the allowance for new independent sector residents, transferring the funds instead to local authorities (Department of Health, 2000a). It appears that the intention is not to retain the resources' limited function of paying for accommodation costs, but to give local authorities the opportunity to increase spending on prevention and rehabilitation. The other way of resolving this would have been to make residential allowance available to those in council residential care. One difficulty is that this appears to make benefit provision for housing costs for residential care vanish. The implications of this need to be thought through.

Firstly, as we have seen, the critique by the Royal Commission for Long Term Care of the Elderly of the present system of financing long-term care divided the funding streams into three main components: housing, living and care costs. Since then, Watson and Griffiths (1999) and the Audit Commission (2000) have proposed a solution to the tangle of contradictions that form the boundaries between housing, support and care provision, which is not resolved by current government proposals. The level playing field they propose involves a recognition that all those in residential care homes, or who receive support in their own homes, have housing, support, living and personal care costs, to varying degrees. Watson and Griffiths argue that only when a common structure is adopted across the board can people in residential care benefit from the aspiration to independent living offered to those living in their own homes, to whatever degree possible. To remove housing costs from the residential care cost calculation is to take a step in the opposite direction, thus making the existing anomalies more difficult to resolve. This wider debate is examined further in Chapter 10.

The Department of Health consultation document on this issue also makes the point that, in addition to the non-eligibility of those in council-run residential homes for residential allowance, they are placed at a disadvantage in comparison to those in independent or voluntary sector homes by not being eligible for Income Support premiums, such as the higher pensioner and severe disability premiums (Department of Health, 2000b). Although private sector residents do not actually see this money, since it is put towards payment of fees, leaving them with the personal expenses allowance of £15.45, it does reinforce the uneven playing field, because, without this state benefit income, it costs social services departments substantially more to make a placement in a council home. The consultation paper puts the financial difference in benefit support for fees at £120.05 in favour of a private sector placement over one in the local authority sector for a resident in his eighties outside London who is severely disabled. It is an inequity that must reduce choice and if in the future there were to be a rationalisation of the funding of residential care and supported housing, it is an anomaly

that would have to be resolved. It is not clear whether any change to this wider disincentive is planned to accompany the transfer of residential allowance.

Preserved rights

The Government intends to transfer to local authorities the funding and care management responsibility for people who entered care homes before the 1993 community care changes and who have 'preserved rights' to income support towards their care costs (Department of Health, 2000b). This is an improvement recommended by the Royal Commission on Long Term Care for the Elderly. In February 1999, there were 90,000 such people: 29,000 were in nursing homes and 61,000 in residential care, of whom 27,000 were aged under 60 (DSS, 1999b).

Recent research has concluded that continuing Income Support funding in this way creates a strong financial disincentive to provide alternative care packages, whatever the circumstances and aspirations of the individual, freezing residents in the residential care regime (Watson and Griffiths, 1999; Department of Health, 2000b; Laing, 2000). The Department of Health emphasises the effect on younger people with learning disabilities, as does Laing, who also emphasises the disadvantage borne by older claimants and their families in the more affluent parts of the country, where Income Support 'preserved rights' limits are insufficient to meet typical market fee rates. It is to be hoped that the transfer will be accompanied by a reassessment of the needs, capacities and wishes of those who have been caught in this anomaly, and by adequate resources to ensure that provision for their care and their potential for independent living make up for past shortcomings.

The place of charging: home care, personal care and 'Supporting People'

Home care services are a component of the continuum of support and care that have a particularly important preventative role, and their accessibility and cost have rightly received much attention. There has been disquiet about wide variations in local authorities' charging policies. This is against a background of significant shifts in the content of home care services. Although more hours of care are being provided, fewer people receive home care services than prior to the introduction of Care in the Community in 1993. There has been an increase in the numbers receiving intensive home care support, and a reduction in the numbers receiving domestic services such as cleaning and shopping. There is some evidence of dissatisfaction among older people with this shift, both in terms of an expressed need to receive help with domestic tasks, and of the quality of the personal care offered (Clark *et al.*, 1998). Once again, we find use of the term 'personal care', applied largely to physical needs, such as washing, eating, dressing, going to the toilet, some of it extending to nursing needs. The Royal Commission on Long Term Care for the Elderly estimates that about one-third of the cost of all domiciliary services (including day centres, meals on wheels and lunch clubs) is allocated to 'personal care'.

The main area of debate has been about paying for home care. The Royal Commission recommended that the personal care element of

home care should be provided free, as it recommended for personal care in residential care homes. The Secretary of State for Health said in his statement of 2 December 1999 that a forthcoming report from the Audit Commission on charges for care at home would help the Government 'look at ways of reducing the scale of variations in local authority domiciliary care charging policies' (Hansard, 1999b). That report has now appeared, and its findings are discussed below (Audit Commission, 2000).

'Supporting People' expressed substantially greater expectations of the Audit Commission report by adding that the Government will consider what appears to be an integrated charging system encompassing charging for services provided through its proposed Specific Grant, in the light of the Audit Commission's findings. Clearly, there is some overlap between the content of services provided through home care and those to be provided through 'Supporting People'. Watson and Griffiths (1999) noted that some social services departments had recognised this and insisted that support services should be provided through home care, which was cheaper than using supported housing providers, but not necessarily appropriate. On the other hand, some providers may gamble on the 'Supporting People' programme being more generous than local authority domiciliary care charges and shift provision into the Transitional Housing Benefit Scheme. This again calls for an integrated solution.

Though this link with 'Supporting People' is not central to the Audit Commission's brief, it is a major issue, because it raises uncomfortable questions about the number of means-tests that tenants are expected to be subject to. Very simply, up to now, there have been two means-tests for support services to people living in their own home: Housing Benefit (also encompassing Council Tax Benefit) and that for domiciliary services, which varies from local authority to local authority. With the introduction of the 'Supporting People' programme and the removal of a tranche of services from the scope of Housing Benefit, we have one more potential stream of provision, and hence of charging and means-testing. This wider perspective points strongly to the need for integration within a strong and clear national framework. With the danger of unconsidered overlaps and inconsistencies, and greater inequity, a new extra stream of means-testing is not acceptable.

This is not the place for detailed consideration of the Commission's findings, which catalogue a high degree of inconsistency between local authorities in some key areas of charging for home care:

- charging systems themselves and their impact
- treatment of benefits
- treatment of partner's resources
- treatment of users' savings
- taking account of additional expenditure due to the costs of disability.

The Commission recommended that guidance should be prepared by the Department of Health on these issues, once the Government's response to the recommendation of free personal care by the Royal Commission was known. Chapter 5 of the Audit Commission report suggests a framework to approach this.

The DETR and the Department of Health are preparing a joint approach to charging for support and home care in order to avoid the pitfalls described above.

The income to be gained from charging needs to be balanced with the cost of administration to both local authorities and providers. In the 'Supporting People' programme, there are strong arguments for not charging at all in a number of sectors of support, particularly in short-term provision with high turnover, where charging frequently causes more trouble than it is worth. This would have the added value of reducing disincentives to work, since means-tests would not kick in as income increased (apart from Housing Benefit towards the cost of accommodation). It would be an increased incentive towards independent living for many groups, including ex-offenders, the single homeless, people recovering from drug and alcohol abuse, women who have suffered domestic violence, young vulnerable people, and people with mental health problems. As such, it could further the aims of the programme and prove highly cost-effective.

This would mean that the 'frontier' between short-term and long-term provision would need to be addressed with considerable care; if those not in short-term accommodation are placed at a disadvantage, perverse incentives may be created (e.g. to remain in short-term provision) (see discussion in Chapter 10). The position of people with recurring problems, such as periods of mental illness or relapses into substance misuse, would need to be resolved, as would the position of people who have been in short-term 'crisis' accommodation, moved on, but retain some need for continuing support. The latter may be resolved at least partly by not charging for floating support. Viewed as a whole, these difficulties may suggest an argument for not charging those aged under 65 at all, particularly if very small proportions are found to be working, and if administrative costs of charging and means-testing are found to be prohibitively high.

The Audit Commission also suggests that its proposed framework can be applied 'to look at long term care in other settings including residential homes, nursing homes and sheltered accommodation'. This represents an important widening of perspective which is consistent with the approach of this review. It is considered in more detail in Chapter 10.

Disability benefits

Disability benefits are a key part of the resources of people who need support to live independently. In supported housing, many providers consider them to be a legitimate target to earmark for fees for support (Watson and Griffiths, 1999). Many researchers have pointed to the same attitude to some or all of disability benefits as a resource to pay for domiciliary care; and an estimated 85 per cent of local authorities now invest in welfare rights advocacy for people with support needs to claim the benefits at least partly for that purpose (Audit Commission, 2000).

There is considerable variation and inconsistency in the call on disability benefits by providers to meet the cost of support services. Most housing association managers in Watson and Griffiths' study thought it was legitimate to call on Attendance Allowance or Disability Living Allowance (DLA) if this was required to balance the budget or to meet the demands of

the main purchasing agency; and 37 per cent expected contributions of Attendance Allowance or Disability Living Allowance from their tenants towards support services. Tenants of half of the housing associations interviewed were paying for services from these benefits, either to the housing association or to the social services purchaser.

Given that some providers were asking for as much as 100 per cent of disability benefits to meet the cost of support services, it is not unreasonable to suggest that a line should be drawn. The issue of inequity is also important. Why should residents receiving disability benefits pay towards core services in supported housing, when those who have no disability benefits (often equally disabled) pay nothing? And, on the other hand, why should some residents have access to services simply because they are in receipt of certain disability benefits?

This debate takes on some urgency when the findings of the new Audit Commission report on charging for home care are added to the picture (Audit Commission, 2000). The Commission found that the vast majority of councils increased their charges for home care where users received Attendance Allowance, again by highly variable amounts. At present, there appears to be no obstacle to the same disability benefits being earmarked to pay for two separate services. This really does need to be remedied under the new dispensation of 'Supporting People', which needs to be combined intelligently with the parallel charging regime for home care.

This is by no means the first report to question the way disability benefits are seen as 'fair game' to meet the costs of support or care services. Berthoud's (1998) report *Disability Benefits – a Review of the Issues and Options for Reform* and Kestenbaum's (1997) *Disability-related Costs and Charges for Community Care* have drawn attention to the same issue. As Berthoud emphasises, the problem hinges on a lack of clarity about what disability benefits are for:

> *A potential difficulty with DLA lies in deciding what it is 'meant' to pay for … the answer is much less clear for the attendance allowance and the care component. It is widely thought to be intended to pay for the costs of 'attendance'. There are, though, many items of evidence that this was not and is not the intention.*
>
> - *Those closely associated with the introduction of the original attendance allowance say that it was designed as a general extra cost benefit, not a payment for care …* (McGinnis, 1991)
> - *The White Paper which proposed converting Attendance Allowance and Mobility Allowance into DLA clearly focused on the general extra cost of living and made no mention of the costs of personal support* (DSS, 1990)
> - *The Department of Social Security has made it clear that DLA is intended to provide help towards the extra costs associated with disability. The care and mobility criteria are just a means of identifying people with extra needs (Kestenbaum, 1997). The recent Green Paper discussed these benefits entirely within the context of general extra costs.* (Berthoud, 1998)

What are these extra costs associated with disability? Clearly, they include the costs of the services we are discussing: the problem is whether a benefit intended to meet a wide range of costs, and paid to the claimant, should be

'earmarked' for specific purposes, with the result that other needs may not be met, such as higher costs of transport, heating, chemist's goods, and indeed higher costs associated with recreation and education, if recipients of disability benefits are not to be subject to assumptions of social exclusion. The Audit Commission recommends that local authorities should take account of the extra costs of disability before arriving at a net charge for domiciliary care, but this is a complex exercise for each individual, and would require real commitment of resources and skills. Nor are there consistent parameters within which to assess the extra costs of disability. Berthoud examines the literature and identifies estimated extra costs ranging from £20 a week for severely disabled people (1985 Disability Survey, 1998 prices), through £50 a week based on analysis of variations in the standard of living between disabled and non-disabled people, to £120 a week based on detailed interviews by disability organisations (Berthoud, 1998).

Watson and Griffiths (1999) also found that disposable income plays a significant part in achieving the policy objectives of independent living and social inclusion. In some cases, Attendance Allowance or Disability Living Allowance was found to be earmarked for extra services that enabled residents to extend their social life or activities, or pursue their education. Their report recommended that provider agencies should call on contributions from disability benefits only where they were offering an 'extension' service which provided (or facilitated access to) educational, vocational, recreational and social activities. It argued that such benefits should not be used to help pay for a core level of support services. The guiding principles were that individuals should always have an explicit choice about how they used their disability benefits, and they should not be deterred from living in supported housing or receiving an appropriate support service because they would lose all or part of their disability income. This is consistent with Berthoud's finding that people use the income for very different purposes, many of which have no substitute sources of funding.

However, it has to be recognised that disability benefits are earmarked for contributions to meet charges for home care in the vast majority of local authorities. Faced with the improbability of rolling back the current practice of home care charging, Watson and Griffiths opted for a ceiling of a proportion of disability benefits to be called on to meet domiciliary charges and non-core support charges. They suggested 25 per cent of the benefit received – but also that the non-core support charges should be ones that the user is in a position to choose.

Overlapping charges to the same individual for different services would be eliminated by an integrated charging system for support services and domiciliary care, which would have to take a common approach to disability benefits. This issue needs to be taken forward by the DETR and the Department of Health, informed by consultation with users.

There is one further issue of consistency that needs urgently to be addressed. Those who are in residential care and whose place is funded by a social services department do not have access to disability benefits, unlike those who make their own arrangements, who do. This has always been inequitable and illogical; it was introduced to put local-authority-funded

packages at a disadvantage compared to the private sector. Any reform, piecemeal or comprehensive, should address this.

The Independent Living Funds

The inequities discussed above are added to by the way resources are treated for charging in the Independent Living Funds, which make cash awards to help pay for the cost of employing one or more personal assistants to provide personal and domestic care. This is yet another overlay to the tangle of charging schemes that needs to be brought into the discussion. Around 15,000 people, nearly all under 66 (the age limit for applying), receive these payments. There have been two Independent Living Funds: the first one, established in 1988, makes payments only to existing claimants. The second, known as ILF93, is run by a discretionary trust funded by the DSS. It has a rigorous means-test and, once again, half of the DLA Care Component is taken as a contribution from the claimant. Unlike the case of contributions to providers for support, and those taken towards home care, this is a firm national rule. It means that, theoretically, more than the value of DLA can be taken from an individual from various sources to meet the costs of support or care. This really does need to be rationalised as part of a new dispensation in charging.

In addition, the full value of Income Support's severe disability premium is taken towards the cost of ILF93. This means that the maximum possible contribution from an Income Support and DLA recipient towards ILF93 is £66.95 a week. There are concerns about the way recipients have to pay far higher contributions than they would if they were receiving funding only from their social services department; since local authorities can save a substantial amount when ILF is received, this presents them with a dilemma which is very difficult to resolve equitably. This reinforces the point that an overview needs to be taken of all charging for services for support and care, beginning from the experience of the user, with what can only be an interdepartmental resolution (Killingbeck, 2000, forthcoming).

Disposable income

In examining variations in charging and call on benefits by providers and local authorities, Watson and Griffiths (1999) identified huge discrepancies in the disposable incomes of tenants and residents after charges were paid. The unacceptable inequity represented by the residential care personal expenses allowance of £15.45 has been mentioned already. However, the research also found great differences in the resources left to individuals in non-registered accommodation – people with nominally the same subsistence level of Income Support with such variations in charges and treatment of disability benefits that, for all the 'independent living' open to them, they might as well have been in residential care. This has not up to now been an 'independent living' issue, but it is of fundamental importance. In the era of the Minimum Wage, it is time this was recognised and prioritised at policy level.

This issue has a specific application in the way charging and means-testing are applied. First of all, the cumulative impact of different charges on the individual must be at the heart of any system. Second, the application of any charge must be built on the foundation of a

minimum disposable income; that is, the maximum charge applied should be a percentage of a recognised 'excess' income above that minimum. Sums devoted to specific need above a ceiling of cost should be disregarded for charging purposes, to ensure that those with severe disabilities are not penalised. Such a co-ordinated approach would be a great improvement.

Board and the Care Standards Bill

Another issue is raised by the repeal of the Registered Homes Act and its replacement by the Care Standards Bill. The two conditions for registration as residential care under the Act are receipt of personal care and board. The removal of board as a criterion for registration will mean that a number of 'no board' hostels are likely to be registered as care homes, with substantial implications for their objective of fostering independent living. It also means that some previously unregistered adult placements will be classed as care homes, with the same consequence. These issues are under discussion between the Departments of Social Security and Health, with the aim of minimising adverse effects.

8 Modernising social services

The Department of Health report *Modernising Social Services* brings together a raft of initiatives to improve standards and consistency in assessment for adult social services, and to strengthen the commitment to maintaining the capacity for living in the community wherever this is feasible (Department of Health, 1998).

This clearly fits into the continuum of needs, services and funding streams addressed in this report. Much of the thinking about access and standards has application across the board. However, there is a difference between collaboration between separate entities and overlap of functions. Packages of support will be set up by the 'Supporting People' commissioning body, actively involving social services alongside other players. Packages of support will also continue to be set up by social services through the community care assessment process, in an area of energetic policy development by the Department of Health, covering ground which is often identical to that addressed by 'Supporting People' – see its 'key objectives for central government and local authorities and probation services in supporting vulnerable people' in Chapter 2.

This is particularly true of the new 'Promoting Independence Prevention Grant', 'for stimulating the development by local authorities of preventative strategies and effective risk assessment, so as to target some low level support for people most at risk of losing their independence … encouraging an approach which helps people do things for themselves for as long as possible, in their own home' (Department of Health, 1998).

Of course this approach is not new, as case studies in *Modernising Social Services* emphasise, though reinforcement of the importance of prevention, and the promotion of robust approaches to needs analysis, are to be welcomed and have something to offer to the 'Supporting People' package. Social services community care packages, as is the intention for 'Supporting People', 'attach support to people rather than accommodation'. They are, as Watson and Griffiths (1999) observe, 'the major resource devoted to this purpose'. What is more, social services funding 'is used for all kinds of support functions, as the research findings demonstrate'. Social services funding for supported housing providers 'is frequently an integral part of the package of support. The exclusion of existing social services resources from the Supporting People package, and the maintenance of what appears to be a parallel administration, continues an anomaly'.

The forthcoming policy guidance from the Department of Health, 'Towards fairer access to adult social care services', is expected to reflect the Secretary of State's parliamentary statement of 2 December 1999:

> *The aim will be to achieve greater consistency between local authorities in the way that they apply eligibility criteria for accessing all adult social services … the guidance will … stress the need to agree eligibility criteria with housing agencies to ensure a properly co-ordinated response to people's needs.*

There appears to be no further reference to what in the long term may be parallel assessment procedures covering largely the same ground. The danger is a worsening of a problem recognised with some force by a report for the Joseph Rowntree Foundation (Johnson *et al.*, 1999):

> *The diverse and often seriously deficient assessment schemes used by doctors, nurses, social workers, psychiatric nurses, care workers, physiotherapists and occupational therapists have two damaging consequences for older clients. The first is that they are beleaguered by professionals doing assessments, absorbing vast amounts of potential care delivery time and energy. The second is that professionals have no shared assessment tools and therefore no trust in the assessment of others. Nor is there any central file on an individual to which all carers refer and contribute … Lack of integration is the fundamental weakness, not commissioning – much as that needs attending to.*

This analysis is endorsed by the Royal College of Nursing (1999). To the objective observer, it does seem that *Modernising Social Services* and 'Supporting People' have the potential to add to the lack of coherence described here. What is strange is that this happens in the context of unprecedented central government intervention aiming to improve standards and rationalise services.

Much of the detail of other initiatives that have flowed from *Modernising Social Services* is entirely consistent with the principles of 'Supporting People'. It includes the report that will set out the implementation of the policy intention *Towards Fairer Access to Adult Social Care Services* and a series of National Service Frameworks for particular service areas, already available. The detail of these documents will not be examined in this report, since we are primarily focused on the overall framework.

Finally, it should be emphasised that, although the aspiration to provide packages of support attached to the individual not the accommodation is common to 'Supporting People' and *Modernising Social Services*, this is not to say that every objective is identical. A main focus of this report is definitional overlaps and inconsistencies, but the forthcoming report *Towards Fairer Access to Adult Social Care Services* will have some emphases that are not there in 'Supporting People'. They include the idea of rapid response with expenditure on specific items which may halt deterioration; the encouragement of independent support and advocacy; and detailed measures to improve the quality and consistency of assessment. However, these issues are highly relevant to the effective and equitable delivery of 'Supporting People', and they concern largely the same client groups, though high eligibility criteria for social services may mean that in general they are less likely to address users with lower needs.

It may be that DETR and Department of Health programmes should combine the best of both initiatives in a seamless way by the time 'Supporting People' is up and running by the middle of the decade.

Partnership arrangements under the Health Act 1999

This is a part of the *Modernising Social Services* package that may have some importance in relation to 'Supporting People'. Section 31 of the Health Act gives NHS bodies and local authorities the power to pool budgets related to a wide range of health and care functions in order to deliver services more flexibly and effectively. This brings in an issue which has been remarked: the relative absence of direct involvement of health authorities in early statements on 'Supporting People', although

they are major commissioners of services, and NHS trusts and primary care groups are heavily involved in working with the same client groups as 'Supporting People'.

In the joint departmental guidance on these arrangements from the DETR, Department for Education and Employment (DfEE) and Department of Health, published in March 2000, there appears to be no mention of the 'Supporting People' programme (DETR, Department for Education and Employment and Department of Health, 2000). However, the powers of the Partnership Arrangements to enable collaborative work across authorities are substantial. The list of services which may be covered by pooling arrangements include among health authority functions 'facilities for the prevention of illness … rehabilitation services, and services intended to avoid admission to hospital'; and, among local authority functions, 'welfare services for people with disabilities … or who have mental health problems … duties to accommodate persons in priority need and in cases of threatened homelessness', and many other areas relevant to 'Supporting People'. They certainly offer a framework for examining ways in which the health dimension, both in terms of joint commissioning and of a stronger health-related perspective for 'Supporting People', could be examined. At the DETR end, there are positive signs in recent consultation documents, which give some prominence to general aims to 'integrate "support" with wider local strategies, particularly with Health', and to 'encourage more co-ordination with NHS bodies in commissioning and funding services' (DETR, 2000a). This dimension will need to be developed.

9 Key findings in brief

- The 'Supporting People' programme combines two of the main funding streams which provide support to those who need help to live in their own homes – Housing Benefit and Supported Housing Management Grant – into an integrated programme at local level. While some real progress is being made within the scope of the 'Supporting People' programme, and some important collaboration between government departments is under way, some major, and many minor, connections have still to be made before the Government achieves the comprehensive and cohesive solution promised by the Inter-departmental Review of November 1997.

- Many problems have arisen from inconsistent use of the term 'personal care' in the Registered Homes Act 1984 to determine whether accommodation is to be registered or not. Registration under the Act has far-reaching implications for the disposable income of users, and thus on their potential for independent living and social inclusion; it means that those reliant on state funding have to subsist on a personal expenses allowance of only £15.45 a week. 'Personal care' is effectively the boundary between eligibility for 'Supporting People' resources and registration. The definitional boundary does not recognise the fluid dynamics of people's needs for personal care; the fact that people need help with bodily functions does not mean that they have no potential or desire for independent living, but that is what the logic of the current regime dictates.

- Changes in Housing Benefit rules over the past six years have led to both registration and de-registration of supported accommodation, with the result that there are large but unspecified numbers of people in supported housing or residential care regimes for funding reasons, not because those regimes suit their needs. It appears that the new Care Standards Commission will introduce national consistency in application of the definition of personal care, with the result that there will be a further wave of both registration and de-registration. However, there are as yet no plans to address the anomalies in individuals' disposable income, either as a result of the historical lack of consistency, or of its future achievement.

- While ensuring quality is clearly desirable for all provision, the tying of registration to a specific financial regime has the perverse consequence of reducing the capacity of people in registered accommodation for independent living, and thus works to undermine one of the Government's main policy objectives. It means that, in the minds of many, registration, instead of suggesting better quality provision as it should do, is associated with less potential for independent living. The Audit Commission and Watson and Griffiths's report have proposed similar structures which remove this obstacle to both better regulation and independent living. Until this issue is addressed, achievement of the aspirations of 'Supporting People' and *Modernising Social Services* will be hindered.

- The Transitional Housing Benefit Scheme is consolidating the restoration of provision to meet the costs of support, begun by the Interim Housing Benefit Scheme introduced

in 1997. On the whole, it is beginning to create a strong base for the introduction of the 'Supporting People' programme from 2003. This is, however, undermined by wording of the Guidance for the scheme, which represents examples of the meaning of the regulation as the substance of its meaning. This creates a danger of reducing the scope of the regulation, when the stated intention is to widen provision. There is anecdotal evidence of wide variation in interpretation of the Guidance, with some district councils operating the Scheme more narrowly. If this is the case, it will affect the size of the Supporting People budget.

- The Guidance also adds to confusion about the interface between support, personal care and health care, in a way that raises questions about how these distinctions operate across the whole continuum of needs and the three key government departments.
- The interface between personal care and nursing care is a mirror image of the debate between support and personal care. A solution with overall coherence needs to address both. Just as in the case of support, an unnecessarily rigid 'frontier' of personal care with nursing care can create a barrier to rational and fluid allocation of resources, and to recognition of the role of staff in responding to residents' needs beyond a narrow cost definition. The Royal College of Nursing argues that false separation of functions that accompany nursing care 'reduces the potential for maintaining independence and rehabilitation'.
- There is also evidence that many health authorities are not following a key Court of Appeal decision in making a proper distinction between tasks in nursing homes that should be the responsibility of NHS funding, and those which should be funded through local authorities and means-testing. As a result, the Royal College of Nursing believes that thousands of people in nursing homes may be paying for what should be provided free through the NHS. In response, Government aims to create a free NHS nursing resource across the sectors, which also has a supervisory function to improve the quality of health care. This new role may be at the expense of the nurse's traditional personal care functions, which may fall to less skilled care staff, at lower cost, but with better supervision. It may distort the allocation of tasks for funding reasons.
- Many providers of supported housing have placed intensive housing management costs within mainstream rents, so that they would not be exposed to the variations in Housing Benefit policies of recent years. This was especially apt where the management functions were ordinary but they happened to be intensive because of the nature of the resident group. Some aspects of 'intensive housing management' may fall within the terms of the Transitional Housing Benefit Scheme, but not all. This issue needs to be closely monitored. A lack of clarity may result in 'tactical loading' of costs, either in mainstream rents or in the Transitional Scheme. Those who have opted for the high rent route may find that their Housing Benefit is restricted once the 'Supporting People' programme is in operation. Work needs to be done to ensure that incentives to put support costs in the Transitional Housing

Benefit Scheme are in place and clearly understood.

- However, some specific housing costs will still be higher in supported housing than in general needs housing, even after the removal of the costs of support from the scheme. For example, some accommodation may receive heavy wear and tear, for a wide range of reasons, both behavioural and related to physical conditions. This may be so in accommodation for people with mental health problems, learning disabilities, young people with behavioural problems, some physical disabilities, and people who misuse drugs and alcohol. It will need to be recognised in Housing Benefit provision once the 'Supporting People' programme is running.
- The Guidance for the Transitional Housing Benefit Scheme makes an unhelpful distinction between 'general' and 'specific' support and counselling. This makes little sense in the context of services on the ground. It is a perspective left over from the past restrictive culture of Housing Benefit in this area, and works against the grain of the positive intentions to 'expand coverage' given at the beginning of the Guidance.
- The Housing Benefit Amendment Regulations establishing the Transitional Housing Benefit Scheme include private sector tenants where they have a valid community care assessment. This excludes important groups such as ex-offenders and care leavers aged 18 or over; and there is a danger that it might drive some marginal groups into the 'community care culture' when they ought to be moving in an opposite direction. This issue was not adequately thought through before the Regulations and Guidance were issued. It has, however, been confirmed that ex-offenders in supported lodging schemes that use private rented accommodation will be positively included in the 'Supporting People' programme, whatever their position in the Transitional Housing Benefit Scheme.
- The Transitional Housing Benefit Scheme is restoring provision to meet the support charges of users of adult placement services, after years of reductions. However, a provision to make a wider range of services available to tenants who receive warden services or their equivalent appears to exclude tenants of adult placement and supported lodging schemes for no clear reason.
- Housing Benefit officers, in determining whether a charge is 'reasonable', will be expected to assess and compare specific service costs in the context of the overall cost of comparable services. This demands an analytical sophistication, which it is unreasonable to expect of Housing Benefit officers, even with substantial training input and professional support.
- 'Supporting People' owes its existence at least in part to a conviction that Housing Benefit expenditure in the supported housing sector, and generally, was spiralling out of control. There was little factual basis for this view of the supported housing sector. Perception of trends in Housing Benefit expenditure is likely to affect the generosity

of future provision to meet both housing and support costs in supported housing under the new regime. It is therefore significant that estimates of Housing Benefit expenditure overall are now being revised downwards quite substantially. One factor in this is a disproportionately sharp fall in the numbers of private tenants receiving Housing Benefit. This is not irrelevant to 'Supporting People', since some of the most socially excluded people with support needs have been housed in the private rented sector.

- The planned transfer of the standardised residential allowance to local authorities may create an obstacle to long-term resolution of some of the perverse incentives that work against the promotion of independent living.
- Another planned transfer to local authorities also needs to be co-ordinated with 'Supporting People': that of funding and care management responsibility for people who entered care homes before the 1993 community care changes and who have 'preserved rights' to income support towards their care costs. The transfer should be accompanied by a reassessment of the needs, capacities and wishes of those who have been caught in this anomaly, which creates a strong financial disincentive to provide alternative care packages, whatever the circumstances and aspirations of the individual, freezing residents within the residential care regime.
- The consequences of another anomaly created by the repeal of the Registered Homes Act and its replacement by the Care Standards Bill need to be addressed: the removal of board as a criterion for registration. This will affect a number of 'no board' hostels and some previously unregistered adult placements, which may find their financial regimes radically and inappropriately changed.
- Up to now, there have been two means-tests for support services to people living in their own home: Housing Benefit (also encompassing Council Tax Benefit), and that for domiciliary services, which, as the new Audit Commission report *Charging with Care* confirms (Audit Commission, 2000), varies widely from local authority to local authority. With the introduction of the 'Supporting People' programme and the removal of a tranche of services from the scope of Housing Benefit, we have one more potential stream of provision, and hence of charging and means-testing. The DETR and the Department of Health need to design a common charging system for support and home care which takes account of the user's capacity to pay, offers more incentives for independent living than exist at present and reduces administrative costs as far as possible. The Audit Commission report offers important guiding principles to this process.
- In particular, the 'Supporting People' programme needs to look at the potential for abolishing charges for temporary provision (including that for ex-offenders, the single homeless, people recovering from drug and alcohol abuse, women who have suffered domestic violence, young vulnerable people and people with mental health problems) which act as a disincentive to independent living and raise little money. If this position is

adopted, that of people in long-term provision, and the frontier between short-term and long-term provision, will have to be examined carefully in order not to create perverse incentives. A new charging scheme will also need to consider the position of people with recurring problems, such as periods of mental illness or relapses into substance misuse, who may use short-term accommodation with support. These difficulties may suggest an argument for not charging those aged under 65 at all, particularly if very small proportions are found to be working, and if administrative costs of charging and means-testing are found to be prohibitively high. If free support services strengthen the ethos of independent living, a higher degree of social inclusion will bring wider benefits to the community.

- People receiving disability benefits are frequently charged more for either support or home care, or both, simply because they receive those benefits. In both charging schemes, there is great inconsistency and a high degree of inequity in applying such charges. Some are left with too little to live on because there is no means to relate what they pay for services and other costs of disability to their disposable income. Further parallel charges on disability benefits are taken from those receiving payments from the Independent Living Fund, which is overseen by the DSS. The DETR, Department of Health and the DSS should take a common approach to the treatment of disability benefits when they consider approaches to charging and means-testing. They should take account of Berthoud's (1998) finding that the current disability benefits were not designed to meet the costs of care, but a wider range of the costs of disability. In spite of assumptions by many in this field, paying for support and home care are not the only costly functions of independent living and social inclusion for disabled people.
- Those who are in residential care and whose place is funded by a social services department do not have access to disability benefits, unlike those who make their own arrangements, who do. This has always been inequitable and illogical; it was introduced to put local-authority-funded packages at a disadvantage compared to the private sector. Any reform, piecemeal or comprehensive, should address this.
- An important principle in designing policies for independent living is that service users should be left with a reasonable level of disposable income. This is clearly not the case for those in registered accommodation who are left with a very low personal expenses allowance. But it is also an issue for the way charges and means-tests are designed; at present, the levels of disposable income of people in unregistered accommodation vary to an unacceptable degree once services are paid for. A new charging and means-testing scheme needs to remedy this. In particular, it should be designed in a way that takes specific account of the service user's income once *all* support and care services are paid for; and in a way that strengthens, not weakens, the aspiration to independent living.

- Many of the objectives of 'Supporting People' and of *Modernising Social Services* overlap. The detailed implications of this need to be addressed, particularly to avoid parallel administration and to ensure national and local co-ordination between 'Supporting People' and initiatives from the Department of Health such as the 'Promoting Independence Prevention Grant'. Some strategies from *Modernising Social Services* suggest an imperative of joint development, particularly those concerning the encouragement of independent support and advocacy, and systematic area needs analysis. The new Health Act provision for pooling budgets may offer some mechanisms for strengthening the role of the health sector in the 'Supporting People' programme.

10 Personal care and its definition: addressing faultlines across the continuum of needs and services

Chapter 4 of this report describes some uses of the term 'personal care' across the three government departments concerned with this field and in the report of the Royal Commission on Long Term Care for the Elderly. The analysis suggests that the Government has some way to go before it achieves a fully strategic inter-departmental approach. The need to stand back and take stock is reinforced by an accumulation of evidence that weakens arguments that the term 'personal care' as used at present should continue to dictate demarcation between funding streams and sectors of provision, as is intended. Indeed, the Government's difficulty during the first half of the year 2000 in defining 'personal care' for the purposes of the Care Standards Bill suggests a pressing need for reassessment.

It is proposed to respond to the challenge this presents and to offer an outline of a solution across the three main departments. There is a problem of whether it is politically realistic to do this. The outlines of the current government strategies are firming up, through implementation of the Transitional Housing Benefit Scheme, the rapid development of 'Supporting People', the different strands of *Modernising Social Services* and through the Care Standards Bill. In some sections, the arguments presented here suggest directions other than the way things are moving. If we take a long view, and noting that in many ways the Government has demonstrated considerable flexibility in this policy area, it is important to persist in pointing to connections that still need to be made.

Wherever we look in considering the spectrum of support and personal care, we see strains at the edges of the definitions of support, as they stray into 'personal care', and strains at the edges of definitions of 'personal care', as they overlap with support. The report *Loose Change* (Watson and Griffiths, 1999) recognised that firm and consistent definition taken to excess can create barriers where none should exist, for example, in the large number of cases where the same member of staff provides both 'support' and 'personal care', whatever the definition of the latter, in premises where users would expect to have the status of tenants and have an aspiration to live as independently as possible. If rigid definition of terms serves only to distort the meeting of needs on the ground, perhaps we need to minimise the need for it.

Either firm and consistent definition is required, or lateral thinking. The former is not much in evidence. Could it be that, in this case, the effort of definition has been focused on a counter-productive distinction? Might the future lie in a funding regime that recognises that people with support packages might require help in the bathroom, vacuum cleaning and help with personal finances from the same person within the same hour? It is worth thinking about.

Registration

Since we have questioned the use of the term 'personal care' in determining the type of financial and support/care regime offered, it follows that we should consider the role of

registration. This has two functions: on the one hand that of regulation and inspection; and on the other in determining the financial regime, which in practice determines access to an ethos of independent living.

In the context of the Government's existing strategies for regulation, quality assurance and inspection, a recasting of registration should offer little difficulty. 'Supporting People' aspires to introduce a regime of quality assurance, which was not part of the Housing Benefit funding route. *Modernising Social Services* says there are too many overlapping inspection regimes as it is, and they need to be rationalised. It could not be more rational to combine these inspection and quality assurance functions, and to introduce consistency in a way that would aim to strengthen the ethos of independent living in the residential care sector, which is also an objective of *Modernising Social Services*.

It is self-evident that effective mechanisms to ensure quality are a good thing. But there is much unhappiness, as we have seen, about the financial consequences of registration, resulting in very low disposable incomes which are seen as 'inimical to independent living' – and about the extent of registration for reasons of funding unrelated to the user's needs.

So why not unhitch registration from the financial regime? There is potential for a much more fluid approach, as advocated by Watson and Griffiths (1999) and more recently by the Audit Commission (2000). It is based on the perception that everyone who needs support in registered or unregistered accommodation has needs and costs related to accommodation, support, personal care (in many cases), and health – the crucial difference in terms of cost is degree. An integrated solution would fund functions and avoid demarcation rules that distorted their provision by distorting their funding. It would mean breaking down the distinction between residential care and supported housing. The end result would be that people who need support or care, whatever their age or needs, might all be in a regime where they could aspire to independent living, to a greater or lesser degree. This does seem to be the logical end of care in the community: the seamless enabling of independent living. It dissolves all kinds of current tensions. For example, 'very sheltered housing' sits uneasily in terms of demarcation outside of residential care, though it offers many similar services, but with a different ethos. If the barrier were broken down, this ethos would be open to residential care homes to develop. Registration would no longer be a controversial financial trigger; it would do the job it was intended to do.

Box 7 Extract from the Audit Commission's (2000) *Charging with Care*

A consistent approach to funding long-term care?

Better aligning charging (against benefits and other users' resources) to the extended framework (Exhibit 22, page 64) would allow people in residential and nursing homes to pay for their housing and living costs in much the same way as they had previously in their own homes. The framework would remove the separate way of financing care in residential and nursing homes. Personal care in residential and nursing homes would be charged

continued overleaf

separately on the same basis as care in people's own homes. Nursing care would be provided or funded by the NHS. The aim would be to make the cost of care independent of the location where the care is provided and more dependent on the amount of care needed.

A significant barrier to joint working between health and social services is created by current incentives to 'shunt costs' between Social Services and the NHS. The development of a consistent approach to the funding of long-term care would remove this barrier and encourage the provision of a seamless service to users.

The framework would also allow a more systematic debate about the role of social security benefits. The same guidance developed for charging against means-tested and other benefits for home care … would be used to design charges independent of where care took place. Separating out the elements of housing provision from the other costs of residential care would also allow organisations who provide residential homes greater scope to adjust charges to suit individuals' choices and needs.

There are, of course, major benefit and cost implications which would need research to quantify. Residential allowance would be transferred to Housing Benefit to meet housing costs, which was the original reason for the allowance's introduction. One of the anomalies of residential care is the lack of clear housing rights, though some providers have tried to remedy this by introducing a tenancy agreement. The planned transfer of residential allowance to social services departments will reinforce the perception of residential care homes as a kind of institutional care where people do not have a sense of paying for their home as a home, or the rights that confers (Department of Health, 2000b). It appears to be a movement in the wrong direction.

But the major financial and philosophical shift would entail abolition of the personal expenses allowance, and creation of a level playing field with tenants in supported housing, with the right to retain normal householders' benefits. Why should those in residential care have lower disposable income than people in very sheltered accommodation? Why should providers of 'high need' unregistered provision have to go through presentational contortions in order to avoid registration, when personal care is clearly provided, but the non-residential regime is right for the user only because of the financial consequences of registration? The point is to open the same possibility of independent living to those who have been taken on the registration funding route through no choice of their own and perhaps against their interests.

Such an approach would be informed by research which examined the anomalies: how many people are in high-needs unregistered accommodation and receive personal care, and how appropriate is this regime? And how many are in accommodation which has been registered for funding reasons, and what are the consequences for them in terms of independent living?

The two elements of change would therefore be:

- the unhitching of registration from the financial regime
- the opening of access to retention of benefits across the board, and thus to a level playing field of aspiration to independent living, or maintaining independence.

The approach is explored in more detail below.

The new configuration

The resultant scheme would create three broad sectors, as Figure 1 shows. The aim would be to create a far simpler framework for the user, and to reflect the reality of what providers and their staff do. The funding channel for support and care would be according to function, irrespective of accommodation, as the Audit Commission suggests. Still, practical realities demand a degree of flexibility at the edges.

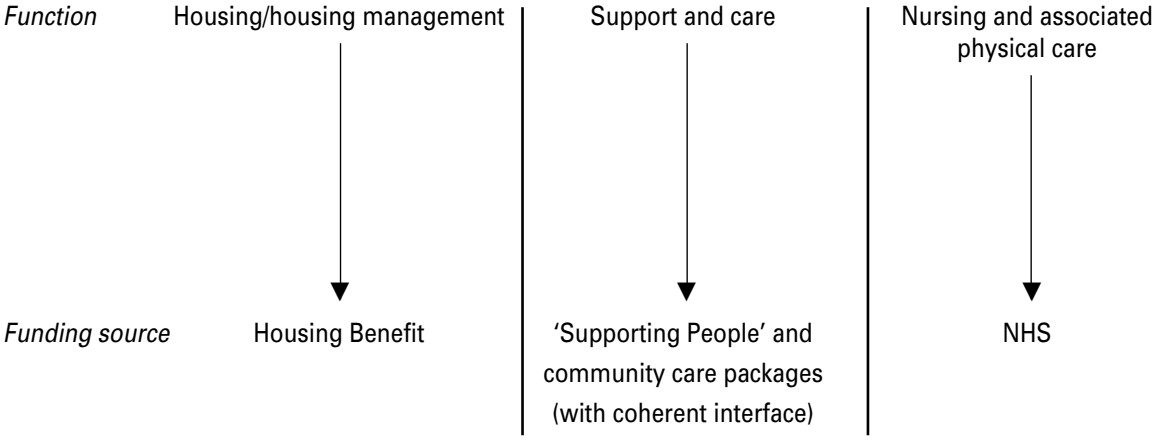
For example, there is no doubt that some of what estate/housing managers do is 'support', for example, in the normal process of avoiding rent arrears. The NHS funding route could reflect the Coughlan judgement, and be taken where health care was the primary need, and nursing and physical care were provided by a person of whom nursing skills were required. If, as seems likely, a specialist, supervisory nursing function is introduced, funded by the NHS, then the physical care funding stream associated with nursing care would move left into the support and care category.

Distinctions between types and degrees of support and care are certainly important in determining the type of skills and regulation required – but, since a wide variety of such services may often be provided to the user by the same person, why should the distinction between them as funding streams be retained?

The danger of distorting financial incentives between funding sources, a feature of the present regimes, would be much diminished.

Social services would retain their role of assessment, care management, responding to need, and carrying out their professional and statutory functions under the Mental Health Act 1984, Children Act 1989, etc.

Figure 1 Functions and funding streams for independent living and care, with assurance of standards unrelated to financial regime



Direct payments would be an alternative means of delivery of the funding, which would be individualised where this was appropriate, once assessment processes with coherent interfaces between community care and 'Supporting People' were devised.

A major feature of the learning climate in the preparatory phase would be use of Section 31 of the 1999 Health Act to pool health and local authority budgets in different ways to discover and prove patterns of good practice. This should include a pilot to combine all the relevant budgets (particularly 'Supporting People' and community care budgets) and to see how far multi-disciplinary assessment and management could work, and duplication could be eliminated, taking account of the recent research conclusions on assessment (Johnson *et al.*, 1999). There would need to be some ring-fencing to ensure that low-dependency provision did not lose out. This kind of approach could create solid foundations in which local and health authorities would not in future be left to make their own rules.

Getting there

Many of those consulted have responded positively to this suggested reconfiguration of services and funding. It overcomes many of the problems we face, but some say it is Utopian, that it is too big a step, at a time when the Government is already committed to a series of related reforms. Some rightly fear too many unknown factors; though that has not prevented a number of the current initiatives from going ahead without a clear idea of their cost, such as 'Supporting People'. Some fear that it will cost too much. However, it may be that a continuation of some of the anomalies described in this report will prove no less painful.

There is no doubt that it is a big step that would require considerable groundwork, as well as a leap of imagination by the Government. Some of the research needed concerning those affected by anomalies in the current framework has been suggested above; and the process of costing would be complex. Perhaps the biggest apprehension for Government would be the potential cost of allowing those in residential care to retain their income-related benefits, as do those in unregistered accommodation. Interestingly, the Nuffield Foundation has recently funded research which suggests that increasing the personal expenses allowance for those in residential care would improve people's quality of life significantly more than would relaxing the capital rule (Hancock, 2000).

But it does not have to be one great step. There is a path that might lead to this ambitious destination. A number of individual moves in the right direction are either being taken by the Government, or are under discussion. 'Supporting People' is implementing a structure that should allow for far greater accountability and responsiveness to need than before. Much cross-departmental development is taking place. Some joint charging, and a far greater sensitivity to the issue of the user's disposable income, are on the agenda.

The major obstacle to further progress towards a coherent funding framework is reliance on the definition of personal care to dictate the financial regime (except where it is domiciliary care). It follows that we should ask, is there a way other than registration to determine whether an individual should, or

should not, be subject to the residential care financial regime?

Given that the Government is unequivocally committed to enabling independent living, and restriction to the personal expenses allowance clearly inhibits that, why not make the *intention to enable independent living* the gateway to retention of benefits – in other words, the equivalent of the non-registered financial regime? What would be different would be that receipt of personal care in the accommodation would no longer determine that regime. The Care Standards Bill definition of personal care could then confine itself to its primary purpose, the standard of care. Amendments to Housing Benefit and Income Support regulations would change the financial regime to one of access to Housing Benefit, retention of income-related benefits, and thence inclusion in the 'Supporting People' programme where, for example, the intention of the support and/or care provided was to:

- provide services that would maintain or increase the user's capacity for independent living, or
- maintain an individual in the community rather than in institutional care.

Whether the support and care met this criterion could be determined by one of a number of possible bodies (to be decided), just as confinement to the registered homes' financial regime is triggered at present by registration under the Registered Homes Act, not a social security decision. Regional Commissions for Care Standards could oversee such determinations, just as their planned function is to bring consistency to the definition of personal care. The latter would still be important, but only in terms of ensuring standards.

Independent living could be defined by guidance, in a way that encompassed, for example, 'very sheltered' housing. There are some forms of words that could be used as a basis; some of them might be found in the Transitional Housing Benefit Scheme, which would be consistent – though the distinguishing feature here would be that receipt of personal care would not mean exclusion. Others would be found in the initiatives encompassed in *Modernising Social Services*, with its watchwords 'promoting independence'. For example, the Department of Health Circular on *Promoting Independence* (Department of Health, 1999) defines prevention as 'action intended to prevent or delay loss of independence and to improve quality of life'. None of the forms of words using this route is as troublesome as 'personal care'; there is a foundation to work from here which is entirely consistent with the Government's strategies. The form of words suggested above is necessarily sketchy, and if 'intention' were not acceptable, it could be replaced by 'provision' of the service, or 'receipt' of it by the user.

The National Care Standards Commission may create a situation which makes this change inevitable. As it standardises interpretation of 'personal care' from 2002, it will identify homes which are registered but should not be; and others which are not registered but should be. Given the circumstances described in this report, the consequences could be chaotic if this issue of financial regime is not addressed.

In summary, the Department of Health might welcome a rationalisation which meant:

- if personal care were provided, registration under the Care Standards Act which *only* determined the regulatory regime
- if provision of support and care were intended to maintain or increase the user's capacity for independent living, the benefits regime would be one of full retention of Income Support and access to Housing Benefit and the 'Supporting People' programme – the gateway decided by an external body as happens at present through the Registered Homes Act.

The 'personal care' definition, which is leading nowhere, could thus be sidestepped to remove many of the perverse incentives and tensions over 'registration versus independent living' overnight. Clearly, it would need modelling and costing, but it could be built on the currently developing structure, and give the 'Supporting People' programme a far better defined scope.

Back to the present: an overview of the options not to charge in key sectors of service

The kind of overview of different support and care functions we have taken above can be usefully applied to the rather fragmented debate about charging for services, though, as we have noted, there are some encouraging signs of integration. For example, over the last year, options not to charge for services have been under discussion in a number of policy areas. They include:

- all nursing care, wherever provided (perhaps defined at a higher skill level than previously) (Department of Health)
- personal care in residential care (Royal Commission recommendation) (Department of Health)
- personal care provided through domiciliary care; a Royal Commission recommendation which has to be set in the context of the Department of Health review of home care charging
- support services provided through 'Supporting People' for short-term or temporary provision, such as that for single homeless people, people with problems of drug or alcohol abuse, vulnerable young people, ex-offenders, women who have suffered domestic violence, etc.

The scope of this debate raises a number of questions. Setting aside the issues of cost and relative priority which have led to the Government rejecting the second and third options, it is legitimate to ask whether there is a hierarchy of arguments for free services. Historically, there has been; at the heart of much discussion is the belief that health services should be free, in accordance with the founding principles of the NHS. Much of the argument that follows is about boundaries and cost. The case for free nursing services is clear in this context, but then cost considerations move the controversy towards arguments about the scope of nursing; if it is confined to highly skilled, specialist functions (including assessment and supervision), then paradoxically it becomes cheaper, because it excludes the large body of

healthcare workers who provide less skilled nursing care. Having its cake and eating it becomes a possibility for the Government, because this cheaper option may result in more consistent standards as it reinforces the specialist assessment and supervisory role. The Government has taken this option.

If that hierarchy were applied, then personal care, the function 'next' to nursing care in the continuum, would be the next argument about the boundary of the NHS principle, as indeed was the case.

However, the possible 'Supporting People' option of free support for people whose support provision is temporary contradicts this 'hierarchy' argument. It is based on pragmatism backed up by principle. Providers argue correctly that a very small proportion of users of that kind of support service are self-financing (particularly working) and able to pay charges; that the cost of collecting charges from a small number of people at the cusp of independence is disproportionate; and that it is counterproductive, operating as a disincentive to independent living. Free short-term support services may increase the incentive to move back into work, in accordance with government policy.

This suggests two poles around which arguments for free services are clustered:

- the historic commitment to free NHS services
- an argument for independent living, particularly enabling access to work, which stands also as an argument for cost-effectiveness.

Both are valid, and they are not contradictory, but they may lead to a 'middle area' of long-term support and care where charges are focused, perhaps arbitrarily, because they are neither healthcare, nor can their users aspire to a relatively high degree of independence. This may add to the social exclusion of such groups, including older people and people with learning disabilities who need support and care, diminishing the cohesion and well-being of the wider community.

This perspective helps to expose some difficulties in the debate about paying for home care. To consider applying the 'NHS principle' only to the personal care element of home care exposes a problem at the heart of the 'free personal care' argument. What is the essential distinction of personal (largely physical) care that it should be free when, for example, doing the shopping and preparing a meal may have just as significant a preventative value to preserve a person's relative independence? The falsity of the distinction is reinforced by people with independent living packages who say that their carers move seamlessly, from moment to moment, from taking them to the bathroom, to cooking them a meal, to doing their shopping. We have seen already that providers report the same seamless provision between support and personal care; so why should definition arbitrarily divide funding streams in domiciliary care too?

This takes us back to the breaking down of a funding distinction between support and personal care in Figure 1 above; there is no reason why the category of support and personal care should not also include domiciliary care. It suggests a way towards a seamless approach to charging; one system that aggregates the cost of support, personal care and home care, and produces a unified net

charge that takes account of disposable income. Not to go the whole way is to retain anomalies for essentially historical reasons.

However, if for the present we have to consider these areas of provision separately, the factor of 'administrative cost plus incentive to independent living' can cast further interesting light on charging policy decisions.

First, the question of charging for home care at all. The cost of administration of charging varies very substantially; the Audit Commission found variation between 8 per cent and 40 per cent of the charges raised going in administration, with an average of 20 per cent. The amount raised from charging those aged 65 or more for home care was £140 million. The Commission also found that 'poor management of charges can have a significant negative effect on users, as well as leaving councils short of resources' (Audit Commission, 2000). The question does arise whether the amount recovered from many of the most vulnerable members of the community might instead represent a good investment by the Government in independent living if it were to make provision free, removing at a stroke an organisational challenge to local authorities of questionable necessity. There are other debates to be had about home care services to those under 65, and indeed other domiciliary services.

The other challenge concerns 'Supporting People'. We have discussed the argument for not charging those receiving temporary or short-term support. But the really big administrative challenge to 'Supporting People' is about charging for support services in sheltered housing. There are about 600,000 people over 65 in sheltered housing. Very roughly, because adequate data do not yet exist, we might estimate that 70–75 per cent of those should continue to receive support services effectively free, because they receive Housing Benefit in excess of their current support charges. Analysis of Housing Corporation data suggests that about 17 per cent of tenants in RSL sheltered housing do not receive Housing Benefit and are therefore likely to be paying their full support charges at present. A small proportion of tenants will cease to receive Housing Benefit because of the removal of support charges from their eligible rent and will have to pay a charge, as they do at present. This means that perhaps 120,000–150,000 sheltered housing tenants could be paying often small support charges through a new and separate charging and means-testing channel, created by the removal of support charges from Housing Benefit and the creation of 'Supporting People'. If some economical way is not found round this, it will not be the coherent and transparent arrangement that the Government set out to achieve with 'Supporting People'.

With a degree of irony, some are suggesting that retaining warden charges as a housing cost and using Housing Benefit purely as a vehicle of remission of payment represents by far the most cost-effective alternative. What would be different from the present is that 'Supporting People' would exist to commission, assure quality and accredit the level of charges through a review process. Thus, the argument goes, 'Supporting People' would be fulfilling an existing policy need by doing only what it does best and not more than it needs to.

This brief discussion suggests that charging policies too would benefit from a cross-departmental overview, to achieve a clearer sense of where we are going.

11 Conclusion

This report can be considered at three levels. First, it describes some relationships between the many strands of government provision and initiative to help people who need support to live in the community.

Second, it identifies contradictions and failures to make needed connections in these relationships, while documenting the Government's progress in its ambitious programmes to integrate services in a way that improves their delivery on the ground. In doing so, it suggests some individual remedies.

Finally, it looks at the continuum of provision and charging for services from accommodation costs, through support and personal care to nursing care. It identifies a pivotal weakness in the way the term 'personal care' is employed at the heart of these relationships. It advocates breaking the link between registration and its financial consequences, thereby putting an end to a significant inhibitor of the promotion of independent living; and recasting the funding streams of support and care. It proposes an alternative to the use of 'personal care' as the trigger to decide the financial regime of accommodation with support and care: 'the provision of services that would maintain or increase the user's capacity for independent living'. An external body would determine whether this criterion was met in each case (as at present through the Registered Homes Act), and consistency of its application would be regulated by the Care Standards Commission. Anyone receiving such services would be entitled to Housing Benefit and full Income Support. It is argued that this would be more in tune with the Government's overall objectives (including the wider community benefit of social inclusion), and that it would remove incentives to opt for the residential care regime for inappropriate funding reasons.

It examines a parallel approach to taking an overview of charging.

These analyses and proposals are offered in the hope that some of the contradictions exposed by the current series of government reviews may create an impetus for their final coherence.

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